N.

NAIL, A measure of length, equal to two inches and a quarter. Vide Measure.

NAKED. This word is used in a metaphorical sense to denote that a thing is not complete, and for want of some quality it is either without power, or it possesses a limited power. A naked contract, is one made without consideration, and, for that reason, it is void; a naked authority, is one given without any right in the agent, and wholly for the benefit of the principal. 2 Bouv. Inst. n. 1302. See Nudum Pactum.

NAME. One or more words used to distinguish a particular individual, as Socrates, Benjamin Franklin.

2. The Greeks, as is well known, bore only one name, and it was one of the especial rights of a father to choose the names for hi's children and to alter them if he pleased. It was customary to give to the eldest son the name of the grandfather on his father's side. The day on which children received their names was the tenth after their birth. The tenth day, called 'denate,' was a festive day, and friends and relatives were invited to take part in a sacrifice and a repast. If in a court of justice proofs could be adduced that a father had held the denate, it was sufficient evidence that be had recognized the child as his own. Smith's Diet. of Greek and Rom. Antiq. h. v.

3. Among the Romans, the division into races, and the subdivision of races into families, caused a great multiplicity of names. They had first the pronomen, which was proper to the person; then the nomen, belonging to his race; a surname or cognomen, designating the family; and sometimes an agnomen, which indicated the branch of that family in which the author has become distinguished. Thus, for example, Publius Cornelius Scipio Africanus; Publius is the pronomen; Cornelius, the nomen, designating the name of the race Cornelia; Scipio, the cognomen, or surname of the family; and Africanus, the agnomen, which indicated his exploits.

4. Names are divided into Christian names, as, Benjamin, and surnames, as, Franklin.

5. No man can have more than one Christian name; 1 Ld. Raym. 562; Bac. Ab. Misnomer, A; though two or more names usually ke* t separate, as John and Peter, may undoubtedly be compounded, so as to form, in contemplation of law, but one. 5 T. R. 195. A letter put between the Christian and surname, as an abbreviation of a part of the Christian name, as, John B. Peterson, is no part of either. 4 Watts' R. 329; 5 John. R. 84; 14 Pet. R. 322; 3 Pet. R. 7; 2 Cowen. 463; Co. Litt. 3 a; 1 Ld. Raym. 562; , Vin. Ab. Misnomer, C 6, pl. 5 and 6: Com. Dig. Indictment, G 1, note u; Willes, R. 654; Bac. Abr. Misnomer and Addition; 3 Chit. Pr. 164 to 173; 1 Young, R. 602. But see 7 Watts & Serg. 406.

5. In general a corporation must contract and sue and be sued by its corporate name; 8 Jobn. R. 295; 14 John. R. 238; 19 John. R. 300; 4 Rand. R. 359; yet a slight alteration in stating the name is unimportant, if there be no possibility of mistaking the identity of the corporation suing. 12 L. R. 444.

6. It sometimes happens that two different sets of partners carry on business in the same social name, and that one of the partners is a member of both firms. When there is a confusion in this respect, the partners of one firm may, in some cases, be made responsible for the debts of another. Baker v. Charlton, Peake's N. P. Cas. 80; 3 Mart. N. S. 39; 7 East. 210; 2 Bouv. Inst. n. 1477.

7. It is said that in devises if the name be mistaken, if it appear the testator meant a particular corporation, the devise will be good; a devise to " the inhabitants of the south parish," may be enjoyed by the inhabitants of the first parish. 3 Pick. R. 232; 6 S. & R. 11; see also Hob. 33; 6 Co. 65; 2 Cowen, R, 778.

8. As to names which have the same sound, see Bac. Ab. Misnomer, A; 7 Serg & Rawle, 479; Hammond's Analysis of Pleading, 89; 10 East. R. 83; and article Idem Sonans.

9. As to the effect of using those which have the same derivation, see 2 Roll. Ab. 135; 1 W. C. C. R. 285; 1 Chit. Cr. Law 108. For the effect of changing one name, see 1 Rop. Leg. 102; 3 M. & S. 453 Com. Dig. G 1, note x.

10. As to the omission or mistake of the name of a legatee, see 1 Rop. Leg. 132, 147; 1 Supp. to Ves. Jr. 81, 82; 6 Ves. 42; 1 P. Wms. 425; Jacob's R. 464. As to the effect of mistakes in the names of persons in pleading, see Steph. Pl. 319. Vide, generally, 13 Vin. Ab. 13; 15 Vin. Ab. 595; Dane's Ab. Index, h. t.; Roper on Leg. Index, b. t; 8 Com: Dig., 814; 3 Mis. R. 144; 4 McCord, 487; 5 Halst. 230; 3 Mis. R. 227; 1 Pick. 388; Merl. Rep. mot Nom; and article Misnomer.

11. When a person uses a name in making a contract under seal, he will not be permitted to say that it is not his name; as, if he sign and seal a bond " A and B," (being his own and his partner's name,) and he had no authority from bis partner to make such a deed, he cannot deny that bis name is A. & B. 1 Raym. 2; 1 Salk. 214. And if a man describes himself in the body of a deed by the name of James and signs it John, he cannot, on being sued by the latter name, plead that his name is James. 3 Taunt. 505; Cro. Eliz. 897, n. a. Vide 3 P. & D. 271; 11 Ad. & L. 594.

NAMES OF SHIPS. The act of congress of December 31, 1792, concerning the registering and recording of ships or vessels, provides,

_3. That every ship or vessel, hereafter to be registered, (except as is hereinafter provided,) shall be registered by the collector of the district in which shall be comprehended the port to which such ship or vessel shall belong at the time of her registry, which port shall be deemed to be that at or nearest to which the owner, if there be but one, or, if more than one, the husband, or acting and managing owner of such ship or vessel, usually resides. And the name of the said ship or vessel, and of the port to which she shall so belong, shall be painted on her stern, on a black ground, in white letters, of not less than three inches in length. And if any ship or vessel of the United States shall be found without having her name, and the name of the port to which she belongs, painted in manner aforesaid, the owner or owners shall forfeit fifty dollars; one half to the person, giving the information thereof, the other half to the use of the United States. 1 Story's L. U. S. 269.

2. And by the act of February 18, 1793, it is directed,

_11. That every licensed ship or vessel shall have her name, and the port to which she belongs, painted on her stern, in the manner as is provided for registered ships or vessels; and if any licensed ship or vessel be found without such painting, the owner or owners thereof shall pay twenty dollars. 1 Story's L. U. S. 290.

3. By a resolution of congress, approved, March. 3, 1819, it is resolved, that all the ships of the navy of the United States, now building, or hereafter to be built, shall be named by the secretary of the navy, under the direction of the president of the United States, according to the following rule, to wit: Those of the first class, shall be called after the states of this Union those of the second class, after the rivers and those of the third class, after the principal cities and towns; taking care that no two vessels in the navy shall bear the same name. 3 Story's L. U. S. 1757.

4. When a ship is pleaged, as in the contract of bottomry, it is indispensable that its name should be properly stated; when it is merely the place in which the pledge is to be found, as in respondentia, it should also be stated, but a mistake in this case would not be fatal. 2 Bouv. Inst. n. 1255.

NAMIUM. An old word which signifies the taking or distraining another person's movable goods; 2 Inst. 140; 3 Bl. Com. 149 a distress. Dalr. Feud. Pr. 113.

NARR, pleading. An abbreviation of the word narratio; a declaration in the cause.

NARRATOR. A pleader who draws narrs serviens narrator, a sergeant at law. Fleta, 1. 2, c. 37. Obsolete.

NARROW SEAS, English law. Those seas which adjoin the coast of England. Bac. Ab. Prerogative, B 3.

NATALE. The state of condition of a man acquired by birth.

NATIONAL or PUBLIC DOMAIN. All the property which belongs to the state is comprehended under the name of national or public domain.

2. Care must be taken not to confound the public or national domain, with the national finances, or the public revenue, as taxes, imposts, contributions, duties, and the like, which are not considered as property, and are essentially attached to the sovereignty. Vide Domain; Eminent Domain.

NATIONALITY. The state of a person in relation to the nation in which he was born.

2. A man retains his nationality of origin during bis minority, but, as in the case of his domicil of origin, he may change his nationality upon attaining full age; he cannot, however, renounce his allegiance without permission of the government. See Citizen; Domicil; Expatriation; Naturalization; Foelix, Du Dr. Intern. prive, n. 26; 8 Cranch, 263; 8 Cranch, 253; Chit. Law of Nat. 31 2 Gall. 485; 1 Gall. 545.

NATIONS. Nations or states are independent bodies politic; societies of men united together for the purpose of promoting their mutual safety and advantage by the joint efforts of their combined strength.

2. But every combination of men who govern themselves, independently of all others, will not be considered a nation; a body of pirates, for example, who govern themselves, are not a nation. To constitute a nation another ingredient is required. The body thus formed must respect other nations in general, and each of their members in particular. Such a society has her affairs and her interests; she deliberates and takes resolutions in common; thus becoming a moral person who possesses an understanding and will peculiar to herself, and is susceptible of obligations and rights. Vattel, Prelim. _1, 2; 5 Pet. S. C. R. 52.

3. It belongs to the government to declare whether they will consider a colony which has thrown off the yoke of the mother country as an independent state; and until the government have decided on the question, courts of justice are bound to consider the ancient state of things as remaining unchanged. 1 Johns. Ch. R. 543; 13 John.

141, 561; see 5 Pet. S. C. R. 1; 1 Kent, Com 21; and Body Politic; State.

NATIVES. All persons born within the jurisdiction of the United States, are considered as natives.

2. Natives will be classed into those born before the declaration of our independence, and those born since.

3. − 1. All persons, without regard to the place of their birth, who were born before the declaration of independence, who were in the country at the time it was made, and who yielded a deliberate assent to it, either express or implied, as by remaining in the country, are considered as natives. Those persons who were born within the colonies, and before the declaration of independence, removed into another part of the British dominions, and did not return prior to the peace, would not probably be considered natives, but aliens.

4. − 2. Persons born within the United States, since the Revolution, may be classed into those who are citizens, and those who are not.

5. − 1st. Natives who are citizens are the children of citizens, and of aliens who at the time of their birth were residing within the United States.

6 The act to establish an uniform rule of naturalization, approved April 14, 1802, _4, provides that the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States" But, the right of citizenship shall not descend to persons whose fathers have never resided in the United States.

7. − 2d. Natives who are not citizens are, first, the children of ambassadors, or other foreign ministers, who, although born here, are subjects or citizens of the government of their respective fathers. Secondly, Indians, in general, are not citizens. Thirdly, negroes, or descendants of the African race, in general, have no power to vote, and are not eligible to office.

8. Native male citizens, who have not lost their political rights, after attaining the age required by law, may vote for all kinds of officers, and be elected to any office for which they are legally qualified.

9. The constitution of the United States declares that no person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president or vice− president of the United States. Vide, generally, 2 Cranch, 280; 4 Cranch, 209; 1 Dal. 53; 20 John. 213; 2 Mass. 236, 244, note; 2 Pick. 394, n.; 2 Kent, 35.

NATURAL AFFECTION. The affection which a husband, a father, a brother, or other near relative, naturally feels towards those who are so nearly allied to him, sometimes supplies the place of a valuable consideration in contracts; and natural affection is a good consideration in a deed For example, if a father should covenant without any other consideration to stand seised to the use of his child, the naming him to be of kin implies the consideration of natural affection, whereupon such use will arise. Carth. 138 Dane’s Ab. Index, h. t.

NATURAL CHILDREN. In the phraseology of the English or American law, natural children are children born out of wedlock, or bastards, and are distinguished from legitimate children; but in the language of the civil law, natural are distinguished from adoptive children, that is, they are the children of the parents spoken of, by natural procreation. See Inst. lib. 3, tit. 1, _2.

2. In Louisiana, illegitimate children who have been acknowledged by their father, are called natural children; and those whose fathers are unknown are contradistinguished by the appellation of bastards. Civ. Code of Lo. art. 220. The acknowledgment of an illegitimate child shall be made by a declaration executed before a notary public, in the presenee of two witnesses, whenever it shall not have been made in the registering of the birth or baptism of such child. Id. art. 221. Such acknowledgment shall not be made in favor of the children produced by an incestuous or adulterous connexion. Id. art. 222.

3. Fathers and mothers owe alimony to their natural children, when they are in need. Id. art. 256, 913. In some cases natural children are entitled to the legal succession, of their natural fathers or mothers. Id. art. 911 to 927.

4. Natural children owe alimony to their father or mother, if they are in need, and if they themselves have the means of providing it. Id. art. 256.

5. The father is of right the tutor of his natural children acknowledged by him; the mother is of right the tutrix of her natural child not acknowledged by the father. The natural child, acknowledged by both, has for tutor, first the father; in default of him, the mother. Id. art. 274. See 1 Bouv. Inst. n. 319, et seq.

NATURAL EQUITY. That which is founded in natural justice, in honesty and right, and which arises ex aequo et bono. It corresponds precisely with the definition of justice or natural law, which is a constant and perpetual. will to give to every man what is his. This kind of equity embraces so wide a range, that human tribunals have never attempted to enforce it. Every code of laws has left many matters of natural justice or equity wholly

unprovided for, from the difficulty of framing general rules to meet them, from the almost impossibility of enforcing them, and from the doubtful nature of the policy of attempting to give a legal sanction to duties of imperfect obligation, such as charity, gratitude, or kindness. 4 Bouv. Inst. n. 3720.

NATURAL OBLIGATION, Civil law. One which in honor and conscience binds the person who has contracted it, but which cannot be enforeed in a court of justice. Poth. n. 173, and n. 191. See Obligation.

NATURAL PRESUMPTIONS, evidence. Presumptions of fact; those which depend upon their own form and efficacy in generating belief or conviction in the mind, as derived from those connexions which are pointed out by experience; they are independent of any artificial connexions, and differ from mere presumptions of law in this essential respect, that the latter depend on and are a branch of th& particular system of jurisprudence to which they belong; but mere natural presumptions are derived wholly by means of the common experience of mankind, without the aid or control of any particular rule of law, but simply from the course of nature and the habits of society. These presumptions fall within the exclusive province of the jury, who are to pass upon the facts. 3 Bouv. Inst. n. 3064; Greenleaf on Ev. _44.

NATURAL DAY. That space of time included between the rising and the setting of the sun. See Day.

NATURAL FOOL. An idiot; one born without the reasoning powers, or a capacity to acquire them.

NATURAL FRUITS. The natural production of trees, bushes, and other plants, for the use of men and animals, and for the reproduction of such trees, bushes or plants.

2. This expression is used in contradistinction to artificial or figurative fruits; for example, apples, peaches and pears are natural fruits; interest is the fruit of money, and this is artificial.

NATURALIZATION. The act by which an alien is made a citizen of the United States of America.

2. The Constitution of the United States, art. 1, s. 8, vests in congress the power " to establish an uniform rule of naturalization." In pursuance of this authority congress have passed several laws on this subject, which, as they are of general interest, are here transcribed as far as they are in force.

3. − 1. An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject. Approved Aprill 14, 1802. 7 Hill, 137.

_1. Be it enacted, &c, That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise: First, That be shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court, of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, three years at least before his admission, that it was, bona fide, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof such alien may, at the time, be a citizen or subject. Secondly, That he shall, at the time of bis application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court. Thirdly, That the court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same:

4. Provided, That the oath of the applicant shall, in no case, be allowed to prove his residence. Fourthly, That in case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state from which he came, he shall in addition to the above requisites, make a express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court:

5. Provided, That no alien, who shall heretofore passed on that subject. Approved April 14, 1802. 7 Hill, 137. _1. Be it enacted, &c. That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise: First, That he shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court, of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, three years at least before his admission, that it was, bona fide, his intention to become a citizen of the United States, and to renounce forever

all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof such alien may, at the time, be a citizen or subject. Secondly, That be shall, at the time of bis application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court. Thirdly, That the court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same:

4. Provided, That the oath of the applicant shall, in no case, be allowed to prove his residence. Fourthly, That in case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to wbich his application shall be made, which renunciation shall be recorded in the said court:

5. Provided, That no alien, who shall be a native citizen, denizen, or subject, of any country, state, or sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States:

6. Provided, also, That any alien who was residing within the limits, and under the jurisdiction, of the United States, before the twenty−ninth day of January, one thousand seven hundred and ninety−five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years, at least, within and under the jurisdiction of the United States, and one year, at least, immediately preceding his application within the state or territory where such court is at the time held; and on bis declaring on oath, or affirmation, that he will support the constitution of the United States, and that be doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; and, moreover, on its appearing to the satisfaction of the court, that, during the said term of two years, he has behaved as a man of good moral cbaracter, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying, for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which be came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof:

7. And provided, also, That any alien who was residing within the limits, and under the jurisdiction, of the United States, at any time between the said twenty−ninth day of January, one thousand seven hundred and ninety−five, and the eighteenth day of June, one thousand seven hundred and ninety−eight, may, within two years after the passing of this act, be admitted to become a citizen, without a compliance with the first condition above specified.

8. − _3. And whereas, doubts have arisen whether certain courts of record, in some of the states, are included within the description of district or circuit courts: Be it further enacted, That every court of record in any individual state, having common law jurisdiction, and a seal, and clerk or prothonotary, shall be considered as a district court within the meaning of this act; and every alien, who may have been naturalized in any such court, shall enjoy, from and after the passing of the act, the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.

9. − _4. That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the said states, under the laws thereof, being under the age of twenty−one years, at the time of their parents' being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States:

10. Provided, That the right of citizenship shall not descend to persons whose fathers have never resided within the United States:

11. Provided also, That no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the late war, shall be admitted a citizen, as aforesaid, without the consent of the legislature of the state in which such person was proscribed.

12. − _5. That all acts heretofore passed respecting naturalization, be, and the same are hereby repealed.

13. − 2. An act in addition to an act, entitled " An act to establish an uniform rule of naturalization; and to repeal the acts heretofore passed ’on that subject." Approved March 26, 1804.

14. − _1. ’Be it enacted, &c. That any alien, being a free white person, who was residing within the limits, and under the jurisdiction of the United States, at any time between the eighteenth day of June, one thousand seven hundred and ninety−eight, and the fourteenth day of April, one thousand eight hundred and two, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without a compliance with the first condition specified in the first section of the act, entitled " An act to establish an uniform rule of naturalization, and to repeal tile acts heretotore passed on that subject."

15. − _2. That when any alien who shall have complied with the first condition specified in the first section of the said orginal act, and who shall have pursued the directions prescribed in the second section of the said − act, may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States; and shall be entitled to all the rights and privileges as such, upon taking the oaths prescribed by law.

16. − 3. An act for the regulation of seamen on board the public and private vessels of the United States.

17. − _12. That no person who shall arrive in the United States, from and after the time when this act shall take effect, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years, next precediug his admission as aforesaid, have resided within tlie United States, without being, at any time during the said five years, out of the territory of the United States. App. March 3, 1813.

18. − 4. An act supplementary to the acts heretofore passed on tlie subject of an uniform rule of naturalization. App. July 30, 1813.

19. − _1. Be it enacted, &c. That persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had, before that day, made a declaration, according to law, of their intentions to become citizens of the United States, or who, by the existing laws of the United States, were, on that day, entitled to becoine citizens without making such declaration, may be admitted to become citizens thereof" notwithstanding they shall be alien enemies, at the time and in the manner prescribed by the laws heretofore passed on the subject: Provided, That nothing herein contained shall be taken or construed to interfere with, or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the naturalization of such alien.

20. − 5. An act relative to evidence in case of naturalization. App. March 22, 1816.

21. − _2. That nothing herein contained shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety−eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein, without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States according to the act of the twenty−sixth of March, one thousand eight hundred and four, entitled "An act in addition to an act, entitled ’An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject.’ "Whenever any person, without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved, to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of tlie United States before the fourteenth day of April one thousand eight hundred and two, and has continued to reside within tlie same, or be shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant;

otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

22. − 6. An act in further addition to "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject." App. Ma 26, 1824.

23. − _1. Be it enacted, &c. That an alien, being a free white person and a minor under the age of twenty−one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty−one years, and who shall have continued to reside therein to the time be way make application to be admitted a citizen thereof, may, after he arrives at the age of twenty−one years, and after be shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the act to which this is an addition, three years previous to his admission.

24. Provided, such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the bona fide intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization.

25. − _2. That no certificates of citizenship, or naturalization, heretofore obtained from any court of record within the United States, shall be deemed invalid, in consequence of an omission to comply with the requisition of the first section of the act, entitled " An Act relative to evidence in cases of naturalization," passed the twenty−second day of March, one thousand eight hundred and sixteen.

26. − _8. That the declaration required by the first condition specified in the first section of the act, to which this is an addition, shall, if the same shall be bona fide, made before the clerks of either of the courts in the said condition named, be as valid as if it had been made before the said courts, respectively.

27. − _4. That a declaration by any alien, being a free white person, of his intended application to be admitted a citizen of the United States, made in the manner and form prescribed in the first condition specified in the first section of the act to which this is an addition, two years before his admission, shall be a sufficient compliance with said condition; anything in the said act, or in any subsequent act, to the contrary notwithstanding.

28. − 7. An mot to amend the acts concerning naturalization. App. May 24, 1828.

29. − _1. Be it enacted, &c. That the second section of the act, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," which was passed on the fourteenth day of April, one thousand eight hundred and two, and the first section of the act, entitled " An act relative to evidence in cases of naturalization," passed on the twenty−second day of March, one thousand eight hundred and sixteen, be, and the same are hereby repealed.

30. − _2. That any alien, being a free white person, who has resided within the Iimits and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within tbe same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen:

31. Provided, That whenever any person without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States when satisfactorily proved, and the place or places where the applicant has resided for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

NATURALIZED CITIZEN. One who, being born an alien, has lawfully become a citizen of the United States Under the constitution and laws.

2. He has all the rights of a natural born citizen, except that of being eligible as president or vice−president of the United States. In foreign countries he has a right to be treated as such, and will be so considered even in tlie country of his birth, at least for most purposes. 1 Bos. & P. 430. See Citizen; Domicil; Inhabitant.

NAUFRAGE, French mar. law. When, by the violent agitation of the waves, the impetuosity of the winds, the storm, or the lightning, a vessel is swallowed up, or so shattered that there remain only the pieces, the accident is called naufrage.

2. It differs from echouement, which is, when the vessel, remains whole, but is grounded; or from bris, which is, when it strikes against a rock or a coast; or from sombrer, which is, the sinking of the vessel in the sea, when it is swallowed up, and which may be caused by any accident whatever. Pardes. n. 643, Vide Wreck.

NAUTAE. Strictly speaking, only carriers by water are comprehended under this word. But the rules which regulate such carriers have been applied to carriers by land. 2 Ld. Raym. 917; 1 Bell's Com. 467.

NAVAL OFFICER. The name of an officer of the United States, whose duties are prescribed by various acts of congress.

2. Naval officers are appointed for the term of four years, but are removable from office at pleasure. Act of May 15, 1820, _1, 3 Story, L. U . S. 1790.

3. The act of March 2, 1799, _21, 1 Story, L. U. S. 590, prescribes that the naval officer shall receive copies of all manifests, and entries, and shall, together with the collector, estimate the duties on all goods, wares, and merchandise, subject to duty, (and no duties shall be received without such estimate,) and shall keep a separate record thereof, and shall countersign all permits, clearances, certificates, debentures, and other documents, to be granted by the collector; he shall also examine the collector's abstracts of duties, and other accounts of receipts, bonds, and expenditures, and, if found right, he shall certify the same.

4. And by _68, of the same law, it is enacted, that every collector, naval officer, and surveyor, or other person specially appointed, by either of them, for that purpose, shall have full power and authority to enter any ship or vessel, in which they shall have reason to suspect any goods, wares, or merchandise, subject to duty, are concealed, and therein to search for, seize, and secure, any such goods, wares, or merchandise and if they shall have cause to suspect a concealment thereof in any particular dwelling house, store, building, or other place, they or either of them shall, upon proper application, on oath, to any justice of the peace, be entitled to a warrant to enter such house, store, or other place (in the day time only,) and there to search for such goods; and if any shall be found, to seize and secure the same for trial; and all such goods, wares and merchandise, on which the duties shall not have been paid, or secured to be paid, shall be forfeited.

NAVICULARIS, civil law. He who had the management and care of a ship. The same as our sea captain. Bouch. Inst. n. 359. Vide Captain.

NAVIGABLE. Capable of being navigated.

2. In law, the term navigable is applied to the sea, to arms of the sea, and to rivers in which the tide flows and reflows. 5 Taunt. R. 705; S. C. Eng. Com. Law Rep. 240; 5 Pick. R. 199; Ang. Tide Wat. 62; 1 Bouv. Inst. n. 428.

3. In North Carolina; 1 M'Cord, R. 580; 2 Dev. R. 30; 3 Dev. R. 59; and in Pennsylvania; 2 Binn. R. 75; 14 S. & R. 71; the navigability of a river does not depend upon the ebb and flow of the tide, but a stream navigable by sea vessels is a navigable river.

4. By the common law, such rivers as are navigable in the popular sense of the word, whether the tide ebb and flow in them or not, are public highways. Ang. Tide Wat. 62; Ang. Wat. Courses, 205 1 Pick. 180; 5 Pick. 199; 1 Halst. 1; 4 Call, 441: 3 Blackf. 136. Vide Arm of the sea; Reliction; River.

NAVIGATION. The act of traversing the sea, rivers or lakes, in ships or other vessels; the art of ascertaining the geographical position of a ship, and directing her course.

2. It is not within the plan of this work to copy the acts of congress relating to navigation, or even an abstract of them. The reader is referred to Story's L. U. S. Index, h. t.; Gordon's Dic. art. 2905, et seq.

NAVY. The whole shippings taken collectively, belonging to the government of an independent nation; the ships belonging to private individuals are not included in the navy.

2. The constitution of the United States, art. 1, s. 8, vests in congress the power to provide and maintain a navy."

3. Anterior to the war of 1812, the navy of the United States bad been much neglected, and it was not until during the late war, when it fought itself into notice, that the public attention was seriously attracted to it. Some legislation favorable to it, then took place.

4. The act of January 2, 1813, 2 Story's L. U. S. 1282, authorized the president of the United States, as soon as suitable materials could be procured therefor, to cause to be built, equipped and employed, four ships to rate not less than seventy−four guns, and six ships to rate forty−four guns each. The sum of two millions five hundred thousand dollars is appropriated for the purpose.

5. And by the act of March 3, 1813, 2 Story, L. U. S. 1313, the president is further authorized to have built six sloops of war, and to have built or procured such a number of sloops of war or other armed vessels, as the public service may require on the lakes. The sum of nine hundred thousand dollars is appropriated for this purpose, and to pay two hundred thousand dollars for vessels already procured on the lakes.

6. The act of March 3, 1815, 2 Story, L. U. S. 1511, appropriates the sum of two hundred thousand dollars annually for three years, towards the purchase of a stock of materials for ship building.

7. The act of April 29, 1816, may be said to have been the first that manifested the fostering care of congress. By, this act the sum of one million of dollars per annum for eight years, including the sum of two hundred thousand dollars per annum appropriated by the act of March 3, 1815, is appropriated. And the president is authorized to cause to be built nine ships, to rate not less than seventy−four guns each, and twelve ships to rate not less than forty−four guns each, including one seventy−four and three forty−four gun ships, authorized to be built by the act of January 2d, 1813. The third section of this act authorizes the president to procure steam engines and all the imperishable materials for building three steam batteries.

8. The act of March 3, 1821, 3 Story's L. U. S. 1820, repeals the first section of the act of the 29th April, 1816, and instead of the appropriation therein contained, appropriates the sum of five bundred thousand dollars per annum for six years, from the year 1821 inclusive, to be applied to carry into effect the purposes of the said act.

9. To repress piracy in the gulf of Mexico, the Act of 22d December, 1822, was passed, 3 St. L. U. S. 1873. It authorizes the president to purchase or construct a sufficient number of vessels to repress piracy in that gulf and the adjoining seas and territories. It appropriates one hundred and sixty thousand dollars for the purpose.

10. The act of May 17, 1826, authorizes the suspension of the building of one of tlie ships above authorized to be built, and authorizes the president to purchase a ship of not less than the smallest class authorized to be built by the act of 29th April, 1816.

11. The act of March 3 , 1827, 3 St. L. U. S. 2070, appropriates five hundred thousand dollars per annum for six years for the gradual improvement of the navy of the United States, and authorizes the president to procure materials for ship building. A further appropriation is made by the act of March 2, 1833, 4 Sharsw. con. of St. L. U. S. 2346, of five hundred thousand dollars annually for six years from and after, the third of March, 1833, for the gradual improvement of the navy of the United States; and the president is authorized to cause the above mentioned appropriatiou to be applied as directed by the act of March 3, 1827.

12. For the rules and regulations of the navy of the United States, the reader is referred to the act " for the better government of the navy of the United States." 1 St. L. U. S. 761. Vide article Names of Ships.

NE DISTURBA PAS, pleading. The general issue in quare impedit. Hob. 162 Vide Rast, 517; Winch. Ent. 703.

NE BAILA PAS. He did not deliver. This is a plea in detinue, by which the defendant denies the delivery to him of the thing sued for.

NE DONA PAS, or NON DEDIT, pleading. The general issue in formedon; and is in the following formula: "And the said C D, by J K, his attorney, comes and defends the right, when, &c., and says, that the said E F did not give the said manor, with the appurtenances, or ally part thereof, to the said G B, and the heirs of his body issuing, in manner and form as the said A B hath in his count above alleged.' And of this the said C D puts himself upon the country." 10 Went. 182.

NE EXEAT REPUBLICA, practice. The name of a writ issued by a court of chancery, directed to the sheriff, reciting that the defendant in the case is indebted to the a complainant, and, that he designs going quickly into parts without the state, to the damage of the complainant, and then commanding him to cause the defendant to give bail in a certain sum that he will not leave the state without leave of the court, and for want of such bail that he tlie sheriff, do commit the defendant to prison.

2. This writ is used to prevent debtors from escaping from their creditors. It amounts in ordinary civil cases, to nothing more than process to hold to bail, or to compel a party to give security to abide the decree to be made in his case. 2 Kent, Com. 32 1 Clarke, R. 551,; Beames' Ne Excat; 13 Vin. Ab. 537; 1 Supp to Ves. jr. 33, 352, 467; 4 Ves. 577 5 Ves. 91; Bac. Ab. Prerogative, C; 8 Com. Dig. 232; 1 Bl. Com. 138 Blake's Ch. Pr. Index, h. t.; Madd. Ch. Pr. lndex, h. t.; 1 Smith's Ch. Pr. 576; Story's Eq. Index, h. t.

3. The subject may be considered under the following heads.

4. − 1. Against whom a writ of ne exect may be issued. It may be issued against foreigners subject to the jurisdiction of the court, citizens of the same state, or of another state, when it appears by a positive affidavit that the defendant is about to leave the state, or has threatened to do so, and that the debt would be lost or endangered

by bis departure. 3 Johns. Ch. R. 75, 412; 7 Johns. Ch. R. 192; 1 Hopk. Ch. R. 499. On the same principle which has been adopted in the courts of law that a defendant could not be held to bail twice for the same cause of action, it has been decided that a writ of ne exeat was not properly issued against a defendant who had been held to bail in an action at law. 8 Ves. jr. 594.

5. − 2. For what claims. This writ can be issued only. for equitable demands. 4 Desaus. R. 108; 1 Johns. Ch. R. 2; 6 Johns. Ch. R. 138; 1 Hopk. Ch. R. 499. It may be allowed in a case to prevent the failure of justice. 2 Johns. Chanc. Rep. 191. When tlie demand is strictly legal, it cannot be issued, because the court has no jurisdiction. When the court has concurrent jurisdiction with the courts of common law, the writ may, in such case, issue, unless the party has been already arrested at law. 2 Johns. Ch. R. 170. In all cases, when a writ of Be exeat is claimed, the plaintiff's equity must appear on the face of the bill. 3 Johns. Ch. R. 414.

6.−3. The amount of bail. The amount of bail is assessed by the court itself and a sum is usually directed sufficient to cover the existing debt, and a reasonable amount of future interest, having regard to the probable duration of the suit. 1 Hopk. Ch. R. 501.

NE LUMINIBUS OFFICIATOR, civil law. The name of a servitude which restrains the owner of a house from making such erections as obstruct the light of the adjoining house. Dig. 8, 4, 15, 17.

NE RECIPIATUR. That it be not received. A caveat or words of caution given to a law officer, by a party in a cause, not to receive the next proceedings of his opponent. 1 Sell. Br. 7.

NE RELESSA PAS. The name of a replication to a plea, of release, by which tlie plaintiff insists he did not release. 2 Buls. 55.

NE UNJUSTE VEXES, old Engl. law. The name of a writ which issued to relieve a tenant upon, whom his lord had distrained for more services than he was bound to perform.

2. It was a prohibition to the lord, not unjustly to distrain or vex his tenant. F. N. B. h. t.

NE UNQUES ACCOUPLE, pleading. A plea by which the party denies that he ever was lawfully married to the person to whom it refers. See the form, 2 Wils. R. 118; Morg. 582; 10 Went. Prec. Pl. 158; 211 Bl. 145; 3 Chit. PI. 599.

NE UNQUES EXECUTOR, pleading. A plea by which the party who uses it denies that the plaintiff is an executor, as he claims to be; or that the defendant is executor, as the plaintiff in his declaration charges him to be. 1 Chit. Pl. 484; 1 Saund. 274, n. 3; Coin. Dig. Pleader, 2 D, 2 2 Chit. PI. 498.

NE UNQUES SEISIE QUIZ DOWER, pleading. A plea by which a defendant denies the right of a widow who sues for, and demands her dower in lands, &c., late of her husband, because the husband was not, on the day of her marriage with him, or any time afterwards, seised of such estate, so that she could be endowed −of the game. See 2 Saund. 329; 10 Went. 159; 3 Chitt. Pl. 598, and the authorities there cited.

NE UNQUES SON RECEIVER, pleading. The name of a plea in an action of account render, by which the defendant affirms that he never was receiver of tlie plaintiff. 12 Vin. Ab. 183.

NE VARIETUR. These words, which literally signify that it be not varied or changed, are sometimes written by notaries public upon bills or notes, for the purpose of identifying them. This does not destroy their negotiability. 8 Wheat. 338.

NEAT or NET, contracts. The exact weight of an article, without the bag, box, keg, or other thing in which it may be enveloped.

NEATNESS, pleading. The statement, in apt and appropriate words, of all the necessary facts, and ne more. Lawes on Pl. 62.

NECESSARIES. Such things as are proper and requisite for tlie sustenance of man.

2. The term necessaries is not confined merely to what is requisite barely to support life, but includes many of the conveniences of refined society. It is a relative term, which must be applied to the circumstances and conditions of the parties. 7 S. & R. 247. Ornaments and superfluities of dress, such as are usually worn by the party's rank and situation in life, have been classed among necessaries. 1 Campb. R. 120; 7 C. & P. 52; 1 Hodges, R. 31; 8 T. R. 578; 3 Campb. 326; 1 Leigh's N. P. 135.

3. Persons incapable of making contracts generally, may, nevertheless, make legal engagements for necessaries for which they, or those bound to support them, will be held responsible. The classes of persons who, although not bound by their usual contracts, can bind themselves or others for necessaries, are infants and married women.

4. − 1. Infants are allowed to make binding contracts whenever it is for their interest; when, therefore, they are unprovided with necessaries, which, Lord Coke says, include victuals, clothing, medical aid, and "good teaching

and instruction, whereby he may profit himself afterwards," they may buy them, and their contracts will be binding. Co. Litt. 172 a. Necessaries for the infant's wife &lad children, are necessaries for himself. Str. 168; Com. Dig. Enfant, B 5; 1 Sid. 112 2 Stark. Ev. 725; 8 Day, 37 1 Bibb, 519; 2 Nott & McC. 524; 9 John. R. 141.; 16 Mass. 31; Bac. Ab. Infancy, I.

5. − 2. A wife is allowed to make contracts for necessaries, and her husband is generally responsible upon tbem, because his assent is presumed, and even if notice be given not to trust her, still he would be liable for all such necessaries as she stood in need of; but in this case, the creditor would be required to show she did stand in need of the articles furnished. 1 Salk. 118 Ld. Raym. 1006. But if the wife elopes, though it be not with an adulterer, ho is not chargeable even for necessaries; the very fact of the slopement and 'Separation, is sufficient to put persons on inquiry, and whoever gives credit to the wife afterwards, gives it at his peril. 1 Salk. 119; Str. 647; 1 Sid. 109; S. C. 1 Lec. 4; 12 John. R. 293; 3 Pick. R. 289; 2 Halst. 146; 11 John. R. 281; 2 Kent, Com. 123; 2 St. Ev. 696; Bac. Ab. Baron and Feme, H; Chit. Contr. Index, h. t.; 1 Hare & Wall. Sel. Dec. 104, 106; Ham. on Parties, 217.

NECESSARY AND PROPER. The Constitution of the United States, art. 1, s. 8, vests in congress the power " to make all laws, which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, in any department or officer thereof."

2. This power bas ever been viewed with perhaps unfounded jealousy and distrust. is a power expressly given, which, without this clause, would, be im lied. The plain import of the clause is, that congress shall have all incidental and instrumental powers, necessary and proper to carry into execution all the express powers. It neither enlarges any power, specifically granted, nor is it a grant of any new power to congress. It is merely a declaration for the removal of all uncertainty, that the means of carrying into execution those already granted, are included in the grant.

3. Some controversy has taken place as to what is to be considered " necessary; "it has been contended that by this must be understood what is indispensable; but it is obvious the term necessary means no more than useful, needful, requisite, incidental, or conducive to. It is in this sense the word appears to have been used, when connected with the word " proper." 4 Wheat. 418−420; 3 Story, Cons−t. _1231 to 1253.

NECESSARY INTROMISSION, Scotch law. When the husband or wife continues, after the decease of his or her companion in possession of the decedent's goods, for their preservation.

NECESSITY. In general, whatever makes the contrary of a thing impossible, whatever may be the cause of such impossibilities,

2. Whatever is done through necessity, is done without any intention, and as the act is done without will, (q. v.) and is compulsory, the agent is not legally responsible. Bac. Max. Reg. 5. Hence the maxim, necessity has no law; indeed necessity is itself a law which cannot be avoided nor infringed. Clef des Lois Rom. h. t.; Dig 10, 3, 10, 1; Com. Dig. Pleader, 3 M 20, 3 M 30.

3. It follows, then, that the acts of a man in violation of law., or to the injury of another, may be justified by necessity, because the actor has no will to do or not to do the thing, he is a mere tool; but, it is conceived, this necessity must be absolute and irresistible, in fact, or so presumed in point of law.

4. The cases which are justified by necessity, may be classed as follows:

I. For the preservation of life; as if two persons are on the same plank, and one must perish, the survivor is justified in having thrown off the other, who was thereby drowned. Bac. Max, Reg. 5.

5. − 2. Obedience by a person subject to the power of another; for example, if a wife should commit a larceny with her husband, in this case the law presumes she acted by coercion of her husband, and, being compelled, by necessity, she is justifiable. 1 Russ. Cr. 16, 20; Bac. Max. Reg. 5.

6. − 3. Those cases which arise from the act of God, or inevitable accident, or from the act of man, as public enemies. Vide dct of God; Inevitable Accident and also 15 Vin. Ab. 534 Dane's Ab h. t.; 2 Stark. Ev. 713; Marsh. Ins. b. 1, c. 6, s. 3 Jacob's Intr. to. Com. Law. Reg. 74.

7. − 4. There is another species of necessity. The actor in these cases is not compelled to do the act whether he will or not, but he has no choice left but to do the act which may be injurious to another, or to lose the total use of his property. For example, when a man's lands are surrounded by those of others, so that he cannot enjoy them without trespassing on his neighbors. The way which is thus obtained, is called a way of necessity. Gale and Whatley on Easements, 71; 11 Co. 52; Hob. 234; 1 Saund. 323, note. See 3 Rawle, R. 495; 3 M'Cord, R. 131; Id. 170; 14 Mass. R. 56; 2 B. & C. 96; 2 Bing. R. 76; 8 T. R. 50; Cro. Jac. 170; 2 Roll. Ab. 60; 3 Kent, Com. 423; 3 Rawle's R. 492; 1 Taunt. R. 279; 8 Taunt. R. 24; ST. R. 50; Ham. N. P. 198; Cro. Jac. 170; 2 Bouv. Inst. n. 1637;

and Way.

NEGATION. Denial. Two negations are construed to mean one affirmation. Dig. 50, 16, 137.

NEGATIVE. This word has several significations. 1. It is used in contradistinction to giving assent; thus we say the president has put his negative upon such a bill. Vide Veto. 2. It is also used in contradistinction to affirmative; as, a negative does not always admit of the simple and direct proof of which an affirmative is capable. When a party affirms a negative in his pleadings, and without the establishment of which, by evidence, he cannot recover or defend himself, the burden of the proof lies upon him, and he must prove the negative. 8 Toull. n. 18. Vide 2 Gall. Rep. 485; 1 McCord, R. 573; 11 John. R. 513; 19 John. R. 345; 1 Pick. R. 375; Gilb. Ev. 145; 1 Stark. Ev. 376; Bull. N. P. 298; 15 Vin. Ab. 540; Bac. Ab. Pleas, &c. I.

ÿ202. Although as a general rule the affirmative of every issue must be proved, yet this rule ceases to operate the moment the preumption of law is thrown into the other scale. When the issue is on the legitimacy of a child, therefore, it is incumbent on the party asserting the illegitimacy to prove it. 2 Selw. N. P. 709. Vide Affirmative Innocence.

NEGATIVE AVERMENT, pleading, evidence. An averment in some of the pleadings in a case in which a negative is asserted.

2. It is a general rule, established for the purpose of shortening and facilitating investigations, that the point in issue is to be proved by the party who asserts the affirmative; 1 Phil. Ev. 184; Bull N. P. 298; but as this rule is not founded on any presumption of law in fav−or of the party, but is merely a rule of practice and conveience, it, ceases in all cases when the presumption of law is thrown into the opposite scale. Gilb. Ev. 145. For example, when the issue is on the legitimacy of a child born in lawful wedlock, it is, incumbent on the party asserting its illegitimacy to prove it. 2 Selw. N. P. 709.

3. Upon the same principle, when, the negative averment involves a charge of criminal neglect of duty, whether official or otherwise, it must be proved, for the law presumes every man to perform the duties which it imposes. 2 Gall. R. 498; 19 John. R. 345; 10 East, R. 211; 3 B. & P. 302; 3 East, R. 192; 1 Mass. R. 54; 3 Campb. R. 10; Greenl. Ev. SS 80; 3 Bouv. Inst. n. 3089. Vide Onus Probandi.

NEGATIVE CONDITION, contracts, wills. One where the thing which is the subject of it must not happen; as, if I do not marry. Poth. Ob. n. 200; 1 Bouv. Inst. n. 751.

NEGATIVE PREGNANT, pleading. Such form of negative expression, in pleading, as may imply or carry within it an affirmative.

2. This is faulty, because the meaning of such form of expression is ambiguous. Example: in trespass for entering the plaintiff's house, the defendant pleaded, that the plaintiff's daughter gave him license to do so; and that he entered by that license. The plaintiff replied that he did not enter by her license. This was considered as a negative pregnant and it was held the plaintiff should have traversed the entry by itself, or the license by itself, and not both together. Cro. Jac. 87.

3. It may be observed that this form of traverse may imply; or carry within it, that the license was given, though the defendant did not enter by that license. It is therefore in the language of pleading said to be pregnant with the admission, namely, that a license was given: at the same time, the license is not expressly admitted, and the effect therefore is, to leave it in doubt whether the plaintiff means to deny the license, or to deny, that the defendant entered by virtue of that license. It is this ambiguity which appears to constitute the fault. 28 H. VI. 7; Hob. 295; Style's Pr. Reg. Negative Pregnant. Steph. PI. 381; Gourd, Pl. c. 6, _29−37.

4. This rule, however, against a negative pregnant, appears, in modern times at least, to have received no very strict construction; for many cases have occurred in which, upon various grounds of distinction from the general rule, that form of expression has been free from objection. See several instances in Com. Dig. Pleader, R. 6; 1 Lev. 88; Steph. Pl. 383. Vide Arch. Civ. PI. 218; Doct. Pl. 817; Lawe's Civ. Pl. 114; Gould, Pl. c. 6, 36.

NEGATIVE STATUTE. One which is enacted in negative terms, and which so controls the common law, that it has no force in opposition to the statute. Bro. Parl. pl. 72; Bac. Ab. Statutes, G.

NEGLIGENCE, contracts, torts. When considered in relation, to contracts, negligence may be divided into various degrees, namely, ordinary, less than ordinary, more than ordinary. 1 Miles' Rep. 40.

2. Ordinary negligence is the want of ordinary diligence; slight or less than ordinary negligence, is, tlie want of great diligence; and gross or more than ordinary negligence, is the want of slight diligence.

3. Three great principles of responsibility, seem naturally to follow this division.

4. − 1. In those contracts which are made for the sole benefit of the creditor, the debtor is responsible only for

gross negligence, good faith alone being required of him; as in tile case of a depositary, who is a bailee without reward; Story, Bailm. 62; Dane's Ab. c. 17, a, 2; 14 Serg. & Rawle, 275; but to this general rule, Pothier makes two exceptions. The first, in relation to the contract of a mandate, and the second, to the quasi contract negotiorum gestorum; in these cases, he says, the party undertaking to perform these engagements, is bound to use necessary care. Observation Generale, printed at the end of the Traite des Obligations.

5. − 2. In those contracts which are for the reciprocal benefit of both parties, such as those of sale, of hiring, of pledge, and the like, the party is bound to take, for the object of the contract, that care which a prudent man ordinarily takes of his affairs, and he will therefore be held responsible for ordinary neglect. Jones' Bailment, 10, 119; 2 Lord Raym. 909; Story, Bailm. _23; Pothier, Obs. Gener. ubi supra.

6. − 3. In those contracts made for the sole interest of the party who has received, and is to return the thing which is the object of the contract, such, for example, as loan for use, or commodatum, the slightest negligence will make him responsible. Jones' Bailm. 64, 65; Story's Bailm. _237; Pothier, Obs. Gen. ubi supra.

7. In general, a party who has caused an injury or loss to another in consequence of his negligence, is responsible for all the consequence. Hob. 134; 3 Wils. 126; 1 Chit. TI. 129, 130; 2 Hen. & Munf. 423; 1 Str. 596; 3 East, R. 596. An example of this kind may be found in the case of a person who drives his carriage during a dark night on the wrong side of the road, by which he commits an injury to another. 3 East, R. 593; 1 Campb. R. 497; 2 Cam b. 466; 2 New Rep. 119. Vide Gale and Whatley on Easements, Index, h. t.; 6 T. R. 659; 1 East, R. 106; 4 B. & A; 590; S. C. 6 E. C. L. R. 628; 1 Taunt. 568; 2 Stark. R. 272; 2 Bing. R. 170; 5 Esp. R. 35, 263; 5 B. & C. 550. Whether the incautious conduct of the plaintiff will excuse the negligence of the defendant, see 1 Q. B. 29; 4 P. & D. 642; 3 M. Lyr. & Sc. 9; Fault.

8. When the law imposes a duty on an officer, whether it be by common law or statute, and he neglects to perform it, he may be indicted for such neglect; 1 Salk. R. 380; 6 Mod, R. 96; and in some cases such neglect will amount to a forfeiture of the office. 4 Bl. Com. 140. See Bouv. Inst. Index, h. t.

NEGLIGENT ESCAPE. The omission to take such a care of a prisoner as a gaoler is bound to take, and in consequence of it, the prisoner departs from his confinement, without the knowledge or consent of the gaoler, and eludes pursuit.

2. For a negligent escape, the sheriff or keeper of the prison is liable to punishment in a criminal case; and in a civil case, be is liable to an action for damages at the suit of the plaintiff. In both cases, the prisoner may be retaken. 3 Bl. Com. 415.

NEGOTIABLE. That which is capable of being transferred by assignment; a thing, the title to which may be transferred by a sale and indorsement or delivery.

2. A chose in action was not assignable at common law, and therefore contracts or agreements could not be negotiated. But exceptions have been allowed to this rule in relation to simple contracts, and others have been introduced by legislative acts. So that, now, bills of exchange, promissory notes, bills of lading, bank notes, payable to order, or to bearer, and, in some states, bonds and other specialties, may be transferred by assignment, indorsement, or by delivery, when the instrument is payable to bearer.

3. When a claim is assigned which is not negotiable at law, such, for example, as a book debt, the title to it remains at law in the assigner, but the assignee is entitled to it in equity, and he may therefore recover it in the assignor's name. See, generally, Hare & Wall. Sel. Dec. 158 to 194 Negotiable paper.

NEGOTIABLE PAPER, contracts. This term is applied to bills of exchange and promissory notes, which are assignable by indorsement or delivery.

2. The statute of 3 & 4 Anne (the principles of which have been generally adopted in this country, either formally, or in effect,) made promissory notes payable to a person, or to his order, or bearer, negotiable like inland bills, according to the custom of merchants.

3. This negotiable quality transfers the debt from the party to whom it was originally owing, to the holder, when the instrument is properly indorsed, so as to enable the latter to sue in his own name, both the maker of a promissory note, or the acceptor of a bill of exchange, and the other parties to such instruments, such as the drawer of a bill, and the indorser of a bill or note, unless the holder has been guilty of laches in giving the required notice of non−acceptance or non−payment. But in order to make paper negotiable, it is essential that it be payable in money only, at all events, and not out of a particular fund. 1 Cowen, 691; 6 Cowen, 108; 2 Whart. 233; 1 Bibb, 490, 503; 1 Ham. 272; 3 J. J. Marsh, 174, 542; 3 Halst. 262; 4 Blackf. 47; 6 J. J. Marsh, 170; 4 Mont. 124. See 1 W. C. C. R. 512; 1 Miles, 294; 6 Munf. 3; 10 S. & R. 94; 4 Watts, 400; 4 Whart. R. 252; 9 John. 120; 19 John.

144; 11 Verm. 268; 21 Pick. 140. Vide Promissory note. Vide 3 Kent. Com. Lecture 44; Com. Dig. Merchant, F 15, 16; 2 Hill, R. 59; 13 East, 509; 3 B. & C. 47; 7 Bing. 284; 5 T. R. 683; 7 Taunt. 265, 278; 3 Burr. 1516 6 Cowen, 151.

4. To render a bill or note negotiable, it must be payable to order, or to bearer. When it is payable " to A B only," it cannot be negotiated so as to give the indorsee a claim against any one but his indorser. Dougl. 615. An indorsement to A B, without adding " or order," is not restrictive to A B alone, he may, therefore, assign it to another; Str. 557; or he may indorse it in blank, when any attempt, afterwards, to restrain its negotiability will be unavailing. Esp. N. P. Cas. 180; 1 Bl. Rep. 295. Vide Blank Indorsement; Indorsment.

NEGOTIATION, contracts The deliberation which takes place between the parties touching a proposed agreement.

2. That which transpires in the negotiation makes no part of the agreement, unless introduced into it. It is a general rule that no evidence can be given to add, diminish, contradict or alter a written instrument. 1 Dall. 426; 4 Dall. 340; 3 S. & R. 609; 7 S. & R. 114. See Pourparler

NEGOTIATION, merc. law. The act by which a bill of exchange or promissory note is put into circulation by being passed by one of the original parties to another person.

2. Until an accommodation bill or note has been negotiated, there is no contract which can be enforced on the note: the contract, either express or implied, that the party accommodated will indemnify the other, is, till then, conditional. 2 Man. & Gr. 911.

NEGOTIORUM GESTOR, contracts. In the civil law, the negotiorum gestor is one who spontaneously, and without authority, undertakes to act for another during his absence, in his affairs.

2. In cases of this sort, as he acts wholly without authority, there can, strictly speaking, be no contract, but the civil law raises a quasi mandate by implication, for the benefit of the owner in many such cases. Poth. App. Negot. Gest. Mandat, n. 167, &c.; Dig. 3, 5, 1, 9; Code, 2, 19, 2.

3. Nor is an implication of this sort wholly unknown to the common law., where there has been a subsequent ratification of acts of this kind by the owner; and sometimes, when unauthorized acts are done, positive presumptions are made by law for the benefit of particular, parties. For example, if a person enters upon a minor’s lands, and takes the profit’s, the law will oblige him to account to the minor for the profits, as his bailiff, in many cases. Dane’s Abr. ch. 8, art. 2; SS 10; Bac. Abr. Account 1; Com. Dig. Accompt, A 3.

4. There is a case which has undergone decisions in our law, which approaches very near to that of negotionum gestorum. A master bad gratuitously taken charge of, and received on board of his vessel a box, containing doubloons and other valuables, belonging to a passenger, who was to have worked his passage, but was accidentally left behind. During the voyage, the master opened the box, in the presence of the passengers, to ascertain its contents, and whether there were contraband goods in it; and he took out the contents and lodged them in a bag in his own chest in his cabin, where his own valuables were kept. After his arrival in port, the bag was missing. The master was held responsible for the loss, on the ground that he had imposed on himself the duty of carefully guarding against all peril to which the property was exposed by means of the alteration in the place of custody, although as a bailee without hire, he might not otherwise have been bound to take more than a prudent care of them; and that he had been guilty of negligence in guarding the goods. 1 Stark. R. 237. See Story, Bailm. _189; Story, Agency, _142; Poth. Pand. 1. 3, t. 5, n. 1 to L4; Poth. Ob. n. 113; 2 Kent, Com. 616, 3d ed; Ersk. Inst. B. 1, t. 3, SS 52; Stair, Inst. by Brodie, B. l, t. 8, _3 to 6.

NEIF, old Eng. law. A woman who was born a villain, or a bond woman.

NEMINE CONTRADICENTE, legislation. These words, usually abbreviated nem. con., are used to signify the unanimous consent of the house to which they are applied. In England they are used in the house of commons; in the house of lords, the words to convey the same idea are nemine dissentiente.

NEPHEW, dom. rel. The son of a person’s brother or sister. Amb. 514; 1 Jacob’s Ch. R. 207.

NEPOS. A grandson. This term is used in making genealogical tables.

NEUTRAL PROPERTY, insurance. The words "neutral property " in a policy of insurance, have the effect of warranting that the property insured is neutral; that is, that it belongs to the citizens or subjects of a state in amity with the belligerent powers.

2. This neutrality must be complete hence the property of a citizen or subject of a neutral state, domiciled in the dominions of one of the belligerents, and carrying on commerce there, is not neutral property; for though such person continue to owe allegiance to bis country, and may at any time by returning there recover all the privileges

of a citizen or subject of that country; yet while he resides in the dominion of a belligerent he contributes to the wealth and strength of such belligerent, and is not therefore entitled to the protection of a neutral flag; and his property is deemed enemy's property, and liable to capture, as such by the other belligerent. Marsh. Ins. B. 1, c. 9, s. 6; l John. Cas. 363; 3 Bos. & Pull. 207, u. 4; Esp. R. 108; l Caines' R. 60; 16 Johns. R. 128. See also 2 Johns. Cas. 478; 1 Caines' C. Err. xxv.; l Johns. Cas. 360; 2 Johns. Cas. 191.

3. If the warranty of neutrality be false at the time, it is made, the policy will be void ab initio. But if the 'ship, and property are neutral at the time when the risk commences, this is a sufficient compliance with a warranty of neutral property, and a subsequent declaration of war will not be a breach of it. Dougl. 705. See 1 Binn. 293; 8 Mass. 308; 14 Johns. R. 308; 5 Binn. 464; 2 Serg. & Rawle, 119; 4 Cranch, 185; 7 Cranch, 506; 2 Dall. 274.

NEUTRALITY, international law. The state of a nation which takes no part between two or more other. nations at war with each other.

2. Neutrality consists in the observance of a strict and honest impartiality, so as not to afford advantage in the war to either party; and particularly in so far restraining its trade to the accustomed course, which is held in time of peace, as not to render assistance to one of the belligerents in escaping the effects of the other's hostilities Even a loan of money to one of the belligerent parties is considered a violation of neutrality. 9 Moore's Rep. 586. A fraudulent neutrality is considered as no neutrality.

3. In policies of insurance there is frequently a warranty of neutrality. The meaning of this warranty is, that the property insured is neutral in fact, and it shall be so in appearance and conduct; that the property does belong to neutrals; that it is or shall be documented so as to prove its neutrality, and that no act of the insured or his agents shall be done which can legally compromise its neutrality. 3 Wash. C. C. R. 117. See 1 Caines, 548; 2 S. & R. 119; Bee, R. 5; 7 Wheat. 471; 9 Cranch, 205; 2 John. Cas. 180; 2 Dall. 270; 1 Gallis. 274; Bee, R. 67.

4. The violation of neutrality by citizens of the United States, contrary to the provisions of the act of congress of April 20, 1818, _3, renders the individual liable to an indictment. One fitting out and arming a vessel in the United States, to commit hostilities against a foreign power at peace with them, is therefore indictable. 6 Pet. 445; Pet. C. C. R. 487. Vide Marsh. Ins. 384 a; Park's Ins. 'Index, h. t.; 1 Kent, Com. 116; Burlamaqui, pt. 4, c. 5, s. 16 & 17; Bunk. lib. 1, c. 9; Cobbett's Parliamentary Debates; 406; Chitty, Law of Nat., Index, h. t.; Mann. Comm. B. 3, c. 1; Vattel, 1. 3, c. 7, SS 104; Martens, Precis. liv. 8, c. 7, SS 306; Boucb. Inst. n. 1826−1831.

NEW. Something not known before.

2. To be patented, an invention must be new. When an invention has been described in a printed book which has been publicly circulated, and afterwards a person takes out a patent for it, his patent is invalid, because the invention was not new, 7 Mann' & Gr. 818. See New and Useful Invention.

NEW AND USEFUL INVENTION. This phrase is used in tlie act of congress relating to granting patents for inventions.

2. The invention to be patented must not only be new, but useful; that is, useful in contradistinction to frivolous or mischievous inventions. It is not meant that the invention should in all cases be superior to the modes now in use for the same purposes. 1 Mason's C. C. R. 182; 1 Mason's C. C. R. 302; 4 Wash. C. C. R. 9: 1 Pet. C, C. R. 480, 481; 1 Paine's C. C. R. 203; 3 Mann. Gr. & Scott, 425. The law as to the usefulness of the invention is the same in France. Renouard, c. 5, s. 16, n. 1, page 177.

NEW FOR OLD. A term used in the law of insurance in cases of adjustment of a loss, when it has been but partial. In making such adjustment the rule is to apply the old materials towards the payment of the new, by deducting the value of them from the gross amount of the expenses for repairs, and to allow the deduction of one−third new for old upon the balance. See 1 Cowen, 265; 4 Cowen, 245; 4 Ohio, 284; 7 Pick. 259; 14 Pick. 141.

NEW or NOVEL ASSIGNMENT, pleading. Declarations are conceived in very general terms, and sometimes, from the nature of the action, are so framed as to be capable of covering several injuries. The effect of this is, that, in some cases, the defendant is not sufficiently guided by the declaration to the real cause of complaint; and is, therefore, led to apply his answer to a different matter from that which the plaintiff has in view. For example, it may happen that the plaintiff has, been twice assaulted by the defendant, and one of the assaults is justifiable, being in self−defence, while the other may have been committed without legal excuse. Supposing the plaintiff to bring an action for the latter; from the generality of the statement in the declaration, the defendant is not informed to which of the two assaults the plaintiff means to refer. The defendant may, therefore, suppose, or affect to suppose, that the first is the assault intended, and will plead son assault demesne. This plea the plaintiff cannot safely traverse, because an assault was in fact committed by the defendant, under the, circumstances of excuse

here alleged; the defendant would have a right under the issue joined upon such traverse, to prove these circumstances, and to presume that such assault, and no other, was the cause of action. The plaintiff, therefore, in the supposed case, not being able safely to traverse, and having no ground either for demurrer, or for pleading in confession and avoidance, has no course, but, by a new pleading, to correct the mistake occasioned by the generality of the declaration, and to declare that he brought his action not for the first but for the second assault and this is called a new assignment. Steph. PI. 241−243.

2. As the object of a new assignment is to correct a mistake occasioned by the generality of the declaration, it always occurs in answer to a plea, and is therefore in the nature of a replication. It is not used in any other part of the pleading.

3. Several new assignments may occur in the course of the same series of pleading.

4. Thus in the above example, if it be supposed that three distinct assaults had been committed, two of which were justifiable, the defendant might plead as above to the declaration, and ’then, by way of plea to the new assignment,, he might again justify, in the same manner, another assault; upon which it would be necessary for the plaintiff to new−assign a third; and this upon the first principle by which the first new assignment was required. 1 Chit. PI. 614; 1 Saund. 299 c.

5. A new assignment is said to be in the nature of a new declaration. Bac. Abr. Trespass I, 4, 2; 1 Saund. 299 c. It seems, however, more properly considered as a repetition of the declaration; 1 Chit. PI. 602; differing only in this, that it distinguishes the true ground of complaint, as being different from that which is covered by the plea. Being in the nature of a new or repeated declaration, it is consequently to be framed with as much certainty or specification of circumstances, as the declaration itself. In some cases, indeed, it should be even more particular. Bac. Abr. Trespass, I 4, 2; 1 Chitt. Pl. 610; Steph. Pl. 245. See 3 Bl. Com. 311; Arch. Civ. 318; Lawes’ Civ. PI. Pl. 286; Doct. Pl. 318; Lawes’ Civ. Pl. 163.

NEW HAMPSHIRE. The name of one of the original states of the United States of America. During its provincial state, New Hampshire was governed, down to the period of the Revolution, by the authority of royal commissions. Its general assembly enacted the laws necessary for its welfare, in the manner provided for by the commission under which they then acted. 1 Story on the Const. Book, 1, c. 5, __78 to 81.

2. The constitution of this state was altered and amended by a convention of delegates, held at Concord, in the said state, by adjournment, on the second Wednesday of February, 1792.

3. The powers of the government are divided into three branches, the legislative, the executive, and the judicial.

4. − 1st. The supreme legislative power is vested in the senate and house of representatives, each of which bas a negative on the other.

5. The senate and house are required to assemble on the first Wednesday in June, and at such times as they may judge necessary and are declared to be dissolved seven days next preceding the first Wednesday in June. They are styled The General Court of New Hampshire.

6. − 1. The senate. It will be considered with reference to the qualifications of the electors the qualifications of the members; the number of members; the duration of their office; and the time and place of their election.

7. − 1. Every male inhabitant of each town, and parish with town privileges, and places unincorporated, in this state, of twenty−one years of age and upwards, excepting paupers, and persons excused from paying taxes at their own request, have a right at the annual or other town meetings of the inhabitants of said towns and parishes, to be duly warned and holden annually forever in the month of March, to vote in the town or parish wherein he dwells, for the senators of the county or district whereof be is a member.

8. − 2. No person shall be capable of being elected a senator, who is not seised of a freehold estate, in his own right, of the value of two hundred pounds, lying within this state, who is not of the age of thirty years, and who shall not have been an inhabitant of this state for seven years immediately preceding his election, and a the time thereof he shall be an inhabitant of the district for which he shall be chosen.

9. − 3. The senate is to consist of twelve members.

10. − 4. The senators are to hold their offices from the first Wednesday in June next ensuing their election.

5. The senators are elected by the electors in the month of March.

11. − 2. The house of representatives will be considered in relation to its constitution, under the same divisions which have been made in relation to the senate.

12. − 1. The electors are the same who vote for senators.

13. − 2. Every member of the house of representatives shall be chosen by ballot; and for two years at least next

preceding his election, shall have been an inhabitant of this state; shall have an estate within the district which he may be chosen to represent, of the value of one hundred pounds, one half of which to be a freehold, whereof he is seised in his own right; shall be, at the time of his election, an inhabitant of the district he may be chosen to represent and shall cease to represent such district immediately on his ceasing to be qualified as aforesaid.

14. − 3. There shall be in the legislature of this state, a representation of the people, annually elected, and founded upon principles of equality; and in order that such representation may be as equal as circumstances will admit, every town, parish, or place, entitled to town privileges, having one hundred and fifty rateable male polls, of twenty−one years of age, and upwards, may elect one representative; if four hundred and fifty rateable male polls, may elect two representatives; and so, proceeding in that proportion, make three hundred such rateable polls, the mean of increasing number, for every additional representative. Such towns, parishes, or places, as have less than one hundred and fifty rateable polls, shall be classed by the general assembly, for the purpose of choosing a representative, and seasonably notified thereof. And in every class formed for the above mentioned purpose, the first annual meeting shall be held in the town, parish, or place, wherein most of the rateable polls reside; and afterwards in that which has the next highest number and so on, annually, by rotation, through the several towns, parishes, or places forming the district. Whanever any town, parish, or place entitled to town privileges, as aforesaid, shall not have one hundred and fifty rateable polls, and be so situated as to render the classing thereof with any, other town, parish, or place very inconvenient; the general assembly may, upon application of a majority of the voters of such town, parish, or place, issue a writ for their selecting and sending, a representative to the general court.

15. − 4. The members are to be chosen annually.

16. − 5. The election is to be in the month of March.

17. − 2. The executive power consists of a governor and a council.

18. − 1. Of the governor. 1. The qualifications of electors of governor, are the same as those of senators.

19. − 2. The governor, at the time of his election, must have been an inhabitant of this state for the seven years next preceding, be of the age of thirty years, and have an estate of the value of five hundred pounds, one−half of which must consist of a freehold in bis own right, within the state.

20. − 3. He is elected annually.

21. − 4. The election is in the month of March.

22. − 5. His general powers and duties are as follows, namely 1. In case of any infectious distemper prevailing in the place where the general court at any time is to convene, or any other cause whereby dangers may arise to the health or lives of the members from their attendance, the governor may direct the session to be holden at some other. 2. He is invested with the veto power. 3. He is commander−in−chief of the army and navy, and is invested with power on this subject very minutely described in the contitution as follows, namely: The governor of the state for the time being shall be commander−in−chief of the army and navy, and all the military forces of this state, by sea and land: ana shall have full power, by himself or by any chief commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia and navy; and for the special defence and safety of this state, to assemble in martial array, and put in warlike posture the inhabitants thereof, and to lead and conduct them, and with them encounter, repulse, repel, resist, and pursue, by force of arms, as well by sea as by land, within and without the limits of this state; and also to kill, slay, destroy, if necessary, and conquer by all fitting ways, enterprise and means, all and every such person and persons as shall at any time hereafter in a hostile manner attempt or enterprise the destruction invasion, detriment, or annoyance of this state; and to use and exercise over the army and navy, and over the militia in actual service, the law martial in time of war, invasion, and also in rebellion, declared by the legislature to exist, as occasion shill necessarily require. And surprise, by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition, and other goods, as shall in a hostile manner invade, or attempt the invading, conquering, or annoying this state: And, in fine, the governor is hereby entrusted with all other powers incident to the office of captain−general and commander−in−chief, and admiral, to be exercised agreeably to the rules and regulations of the constitution, and the laws of the land: Provided, that the governor shall not at any, time hereafter, by virtue of any power by this constitution granted, or hereafter to be granted to him by the legislature, transport any of the inhabitants of this state, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the general court, nor grant commissions for exercising the law martial in any case, without the advice and consent of the council.

23. Whenever the chair of the governor shall become vacant, by reason of* his death, absence from the state or otherwise, the president of the senate shall, during such 'Vacancy, have and exercise all the powers and authorities which, by this constitution, the governor is vested with, when personally present; but when the president of the senate shall exercise the office of governor, he shall not hold his office in the senate.

24. − 2. The council. 1. This body is elected by the freeholders and other inhabitants qualified to vote for senators. 2. No person shall be capable of being elected a councillor who has not an estate of the value of five hundred pounds within this state, three hundred pounds of which (or more) shall be a freehold in his own right, and who is not thirty years of age; and who shall not have been in inhabitant of this state for seven years immediately preceding his election; and at the time of his election an inhabitant of the county in which he is elected. 3. The council consists of five mem bers. 4. They are elected annually. 5. The election is in the month of March. 6. Their principal duty is to advise the governor.

25.−3. The governor and council jointly. Their principal, powers and duties are as follows: 1. They may adjourn the general court not exceeding ninety days at one time, when the two houses cannot agree as to the time of adjournment. 2. They are required to appoint all judicial officers, the attorney−general, solicitors, all sheriffs, coroners, registers of probate, and all officers of the navy, and general and field officers of the militia; in these cases the governor and council have a negative on each other. 3. They have the power of pardoning offences, after conviction, except in cases of impeachment.

26. − 2d. The judicial power is distributed as follows:

The tenure that all commissioned officers shall have by law in their offices, shall be expressed in their respective commissions all judicial officers, duly appointed, commissioned and sworn, shall hold. their offices during good behaviour, excepting those concerning whom there is a different provision made in this constitution: Provided, nevertheless, the governor, with consent of council, may remove them upon the address of both houses of the legislature.

27. Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the superior court, upon important questions of law, and upon solemn occasions.

28. In order that the people play not suffer from the long continuance in, place of any justice of the peace, who shall fail in discharging the important duties of his office with ability and fidelity, all commissions of justices of the peace shall become void at the expiration of five years from their respective dates; and upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well being of the state.

29. All causes of marriage, divorce, and alimony, and all appeals from the respective judges of probate, shall be heard and tried by the superior court until the legislature shall by law make other provision.

30. The general court are empowered to give to justices of the peace jurisdiction in civil causes, when the damages demanded shall not exceed four pounds, and title of real estate is not concerned but with right of appeal to either party, to some other court, so that a trial by jury in the last resort may be had.

31. No person shall hold the office of a judge in any court, or judge of probate, or sheriff of any county, after he has attained the age of seventy years.

32. No judge of any court, or justice of the peace, shall act as attorney, or be of counsel, to any Party, or originate any civil suit, in matters which shall come or be brought before him as judge, or justice of the peace.

33. All matters relating to the probate of wills, and granting letters of administration, shall be exercised by the judges of probate, in such manner as the legislature have directed, or may hereafter direct; and the judges of probate shall hold their courts at such place or places, on such fixed days as the conveniency of the people may require, and the legislature from time to time appoint.

34. No judge or register of probate, shall be of counsel, act as advocate, or receive any fees as advocate or counsel, in any probate business which is pending or may be brought into any court of probate in the county of which he is judge or register.

NEW JERSEY. The name of one of the original states of the United States of America. This state, when it was first settled, was divided into, two provinces, which bore the names of East Jersey and West Jersey. They were granted to different proprietaries. Serious dissensions having arisen between them, and between them and New York, induced the proprietaries of both provinces to make a formal surrender of all their powers of government, but not of their lands, to Queen Anne, in April, 1702; they were immediately reunited in one province, and governed by a governor appointed by the crown, assisted by a council, and an assembly of the representatives of

the people, chosen by the freeholders. This form of government continued till the American Revolution.

2. A constitution was adopted for New Jersey on the second day of July, 1776, which continued in force till the first day of September, 1844, inclusive. A convention was assembled at Trenton on the 14th of May, 1844; it continued in, session till the 29th day of Tune, 1844, when the new constitution was adopted, and it is provided by art. 8, s. 4, that this constitution shall take effect and go into operation on the second day of September, 1844.

3. By art. 3, the powers of the government are divided into three distinct department, the legislative, executive and judicial. It further provided that no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except therein expressed.

4. − _1. The legislative power shall be vested in a senate and general assembly. Art. 4, s. 1, n. 1.

5. − 1st. In treating of the senate, it will be proper to consider, 1. The of senators. 2. Of the electors of senators. 3. Of the number−of senators. 4. Of the time for which they are elected.

6. − 1. No person shall be a member of the senate, who shall not have attained the age of thirty years, and have been a citizen and inhabitant of the state for four years, and of the county for which he shall be chosen one year, next before his election. And he must be entitled to suffrage at the time of his election. Art. 4, s. 1, n. 2.

7. − 2. Every white male citizen of the United States, of the age of twenty−one years, who shall have been a resident of this state one year, and of the county in which he claims his vote five months next before the election, shall be entitled to vote for all officers that now are, or hereafter may be elective by the people; provided, that no person in the military, naval, or marine service of the United States, shall be considered a resident in this state, by, being stationed in any garrison, barrack, or military or naval place or station within this state; and no pauper, idiot, insane person, or person convicted of a crime which now excludes him from being a witness, unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector.

8.−3. The senate shall be composed of one senator from each county in the state. Art−. 4, s. 2, n. 1.

9. − 4. The senators are elected on the second Tuesday of October, for three years. Art. 4, s. 2, n. 1. As soon as the senate shall meet after the first election to be held in pursuance of this constitution, they shall be divided, as equally as may be, into three classes. The seats of the, senators of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year; so that one class may be elected every year; and if vacancies happen, by resignation or otherwise, the person elected to supply such vacancies shall be elected for the unexpired terms only. Art. 4, s. 2, n. 2.

10. − 2d. The general assembly will be considered in the same order that has been observed in speaking of the senate.

11. − 1. No person shall be a member, of the general assembly, who shall not have attained the age of twenty−one years, and have been a citizen and inhabitant of the state for two years, and of the county for which he shall be chosen one year next before his election. He must be entitled to this right of suffrage. Art. 4, s. 1, n. 2.

12. − 2. The same persons who elect senators elect members of the general assembly.

13. − 3. The general assembly shall be composed of members annually elected by the legal voters of the counties, respectively, who shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants. The present apportionment shall continue until the next census of the United States shall have been taken, and an apportionment of members of the general assembly shall be made by the legislature, at its first session after the next and every subsequent enumeration or census, and when made shall remain unaltered until another enumeration shall have been taken; provided, that each county shall at all times be entitled to one member: and the whole number of members shall never exceed sixty.

14. − 4. Members of the legislature are elected yearly on the second Tuesday of October.

15. − 3d. The powers of the respective houses are as follows:

16. − 1. Each house shall direct writs of election for supplying vacancies, occasioned by death, resignation, or:otherwise; but if vacancies occur during the recess of the legislature, the writs may be issued by the governor, under such regulations as may be prescribed by law.

17. − 2. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be. authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

18. − 3. Each bouse shall choose its own officers, determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two−thirds, may expel a member.

19. − 4. Each house shall keep a journal of its proceedings, and from time to time publish the same; and the yeas and nays of the members of either house, on any question, shall, at the desire of one−fifth of those present, be entered on the journal.

20. − 5. Neither house, during the session of the legislature, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

21. − 6. All bills and joint resolutions shall be read three time; in each house, before the final passage thereof; and no bill or joint resolution shall pass, unless there be a majority of all the members of each house personally present and agreeing thereto: and the yeas and nays of members voting on such final passage shall be entered on the journal.

22. − 7. Members of the senate and general assembly shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the state; which compensation shall not exceed the sum of three dollars per day for the period of forty days from the commencement of the session; and shall not exceed the sum of one dollar and fifty cents per day for the remainder of the session. When convened in extra session by the governor, they shall receive such sum as shall be fixed for the first forty days of the ordinary session. They shall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting, on the most usual route. The president of the senate, and the speaker of the house of assembly shall, in virtue of their offices, receive an additional compensation equal to one−third of their per diem allowance as members.

23. − 8. Members of the senate and of the general assembly shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same: and for any speech or debate, in either house, they shall not be questioned in any other place.

24. − _2. By the fifth article of the constitution, the executive power is vested in a governor. It will be convenient to consider, 1. The qualifications of the governor. 2. By whom he is elected. 3. The duration of his office. 4. His powers: and 5. His salary.

25. − 1. The governor shall be not less than thirty years of age, and shall have been for twenty years, at least, a citizen of the United States, and a resident of this state seven years next before his election, unless be shall have been absent during that time on the public business of the United States or of this state.

26. − 2. He is chosen by the legal voters of the state.

27. − 3. The governor holds his office for three years, to commence on the third Tuesday of January next ensuing the election of governor by the people, and to end on the Monday preceding the third Tuesday of January, three years thereafter; and he cannot nominate nor appoint to office during the last week of his term. He is not reeligible without an intermission of three years. Art. 5, n. 3.

28. − 4. His powers are as follows: He shall be the commander−in−chief of all the military and naval forces of the state; he shall have power to convene the legislature, whenever, in his opinion, public necessity requires it; he shall communicate, by message, to the legislature, at the opening of each session, and at such other times as he may deem necessary, the condition of the state, and recommend such measures as he may deem expedient; he shall take care that the laws be faithfully executed, and grant, under the great seal of the state, commissions to all such officers as shall be required to be commissioned.

29. Every bill which shall have passed both houses shall be presented to the governor: if he approve, he shall sign it, but if not, he sball return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it; if, after such reconsideration, a majority of the whole number of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved of by a majority of the whole number of that house, it shall become a law; but in neither house shall the vote be taken on the same day on which the bill shall be returned to it; and in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor, within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature, by their adjournment, prevent its return, in which case it shall not be a law.

30. The governor, or person administering the government, shall have power to suspend the collection of fines and forfeitures, and to grant reprieves, to extend until the expiration of a time not exceeding ninety days after

conviction but this power shall not extend to cases of impeachment.

31. The governor, or person administering the government, the chancellor, and the six judges of the court of errors and appeals, or a major part of them, of whom the governor or person administering the government shall be one, may remit fines and forfeitures, and grant pardons after conviction, in all cages except impeachment.

32. − 5. The governor shall, at stated times, receive for his services a compensation which shall be neither increased nor diminished during ’the period for which be shall have been elected.

33. − _3. The judicial power shall be vested in a court of errors and appeals in the last resort in all causes, as heretofore; a court for the trial of impeachments; a court of chancery; a prerogative court; a supreme court; circuit courts, and such inferior courts as now exist, and as may be hereafter ordained and established by law; which inferior courts the legislature may alter or abolish, as the public good shall require.

34. − 1. The court of errors and appeals shall consist of the chancellor, the justices of the supreme court, and six judges, or a major part of them; which judges are to be appointed for six years.

35. − 2. Immediately after the court shall first assemble, the six judges shall arrange themselves; in such manner that the seat of one of them shall be vacated every year, in order that thereafter one judge may be annually appointed.

36.− 3. Such of the six judges as shall attend the court shall receive, respectively, a per diem compensation, to be provided by law.

37. − 4. The secretary of state shall be the clerk of this court.

38. − 5. When an appeal from an order or decree shall be heard, the chancellor shall inform the court, in writing, of the reasons for his order or decree but he shall not sit as a member, or have a voice in the hearing or final sentence.

39. − 6. When a writ of error shall be brought, no justice who has given a judicial opinion in the cause, in favor of or against any error complained of, shall sit as a member, or have a voice on the hearing, or for its affirmance or reversal; but the reasons for such opinion shall be assigned to the court in writing.

40. − 1. The house of assembly shall have the sole power of impeaching, by a vote of a majority of all the members; and all impeachments shall be tried by the senate: the members, when sitting for that purpose, to be on oath or affirmation "truly and impartially to try and determine the charge in question according to evidence:" and no person shall be convicted without the concurrence of two−thirds of all the members of the senate.

41. − 2. Any individual officer impeached shall be suspended from exercising his office until bis acquittal.

42. − 3. Judgment, in cases of impeachment, shall not extend farther than. to removal from, office and to disqualification to hold and enjoy any office of honor, profit, or trust under this state; but the party convicted shall nevertheless be liable to indictment, trial, and punishment, according to law.

43. − 4. The secretary of state shall be the clerk of this court.

44. − 1. The court of chancery shall consist of a chancellor.

45. − 2. The chancellor shall be the ordinary, or surrogate−general, and judge of the prerogative court.

46. − 3. All persons aggrieved by any order, sentence, or decree of the orphans’ court may appeal from the same, or from any part thereof, to the prerogative court; but such order, sentence, or decree shall not be removed into the supreme court, or circuit court if the subject matter thereof be within the jurisdiction of the orphans’ court.

47. − 4. The secretary of state shall be the register of the prerogative court, and shall perform the duties required of him by law in that respect.

48. − 1. The supreme court shall consist of a chief justice and four associate justices. The number of associate justices may be increased or decreased by law, but shall never be less than two.

49. − 2. The circuit courts shall be held in every county of this state, by one or more of the justices of the supreme court, or a judge appointed for that purpose; and shall in all cases within the county, except in those of a criminal nature, have common law jurisdiction concurrent with the supreme court; and any final judgment of a circuit court may be docketed in the supreme court, and shall operate as a judgment obtained in the supreme court, from the time of such docketing.

50. − 3. Final judgments in any circuit court may be brought by writ of error into the supreme court, or directly into the court of errors and appeals.

51. − 1. There shall be no more than five judges of the inferior court of common pleas in each of the counties in this state after the terms of the judges of said court now in office shall terminate. One judge for each county shall be appointed every year, and no more, except to fill vacancies, which shall be for the unexpired term only.

52. − 2. The commissions for the first appointments of judges of said court shall bear date and take effect on the first day of April next; and an subsequent commissions for judges of said court shall bear date and take effect on the first day of April in every successive year, except commissions to fill vacancies, which shall hear date and take effect when issued.

53. − 1. There may be elected under this constitution two, and not more than five, justices of the peace in each of the townships of the several counties of this state, and in each of the wards, in cities that may vote in wards. When a township or ward contains two thousand inhabitants or less, it may have two justices; when it contains more than two thousand inhabitants, and not more than four thousand, it may have four justices; and when it contains more than four thousand inhabitants, it may have, five justices; provided, that whenever any township, not voting in wards, contains more than seven thousand inhabitants, such township) may have an additional justice for each additional three thousand inhabitants above four thousand.

54. − 2. The population of the townships in the several counties of the state and of the several wards shall be ascertained by the lost preceding census of the United States, until the legislature shall provide by law some other mode of ascertaining it.

NEW MATTER, pleading. All facts alleged in pleading, which go in avoidance of what is before, pleaded, on the opposite side, are called new matter. In other words, every allegation made in the pleadings, subsequent to the declaration, and which does not go in denial of what is before alleged on the other side, is an allegation of new matter; generally, all new matter must be followed by a verification. (q. v.) Gould, Pl. c. 3, _195; 1 Saund. 103, n. 1; Steph. PI. 251; Com. Dig. Pleader, E 32; 2 Lev. 5; Vent. 121; 1 Chit. PI. 538; 3 Bouv. Inst. n. 2983. In proceedings in equity, when new matter has been discovered by either plaintiff or defendant, before a decree has been pronounced, a cross bill has been permitted to bring such matter before, the court to answer the purposes of justice. After the answer has been filed, it cannot be introduced by amendment; the only way to introduce it, is by filing a supplemental bill. 4 Bouv. Inst. n. 4385 − 87; 1 Paige 200; Harring. Ch. 438.

NEW PROMISE. A contract made, after the original promise has for some cause been rendered, invalid, by which the promiser agrees to fulfil such original promise.

2. When a debtor has been discharged under the bankrupt laws, the remedy against him is clearly gone, so when an infant has made a contract prejudicial to his interest, he may avoid it; and when by lapse of time a debt is barred by the act of limitations, the debtor may take advantage of the act, but in all these cases there remains a moral obligation, and if the original promiser renews the contract by a new promise, this is a sufficient consideration. See 8 Mass. 127; 2 S. & It. 208; 2 Rawle, 351; 5 Har. & John. 216; 2 Esp. C. 736; 2 H. Bl. 116; 8 Moore, 261; 1 Bing. 281; 1 Dougl. 192; Cowp. 544; Bac. Ab. Infancy and A e, I; Bac. Ab. Limitation of actions, E 85

3. Formerly the courts construed the slightest admission of the debtor as evidence of a new promise to pay; but of late years a more reasonable construction is put upon men’s contracts, and the promise must be express, or at least, the acknowledgment of indebtedness must not be inconsistent with a promise to pay. 4 Greenl. 41, 413; 2 Hill’s S. C. 326; 2 Pick. 368; 1 South. 153; 14 S. & R. 195; 1 McMull. R. 197; 3 Harring. 508; 7 Watts & Serg. 180; 10 Watts, 172; 6 Watts & Serg. 213; 5 Shep. 349; 5 Smed. & Marsh. 564; 1 Bouv. Inst. n. 866.

NEW TRIAL, practice, A reexamination of an issue in fact, before a court and jury, which had been tried, at least once, before the same court and a jury.

2. The origin of the practice of granting new trials is concealed in the night of time.

3. Formerly new trials could be obtained only with the greatest difficulties, but by the modern practice, they are liberally granted in furtherance of justice.

4. The reasons for granting new trials are numerous, and may be classed as follows; namely:

1. Matters which arose before and in the course of trial. These are, 1st. Want of due notice. Justice requires that the defendant should have sufficient notice of the time and place of trial; and the want of it, unless it has been waived by an appearance, and making defence, will, in general, be sufficient to entitle the defendant to a new trial. Bull., N. P. 327; 3 Price’s Ex. R. 72; 3 Dougl. 402; 1 Wend. R. 22. But the insufficiency of the notice must have been calculated reasonably to mislead the defendant. 7 T. R. 59. 2d, The irregular impanneling of the jury; for example, if a person not duly qualified to serve be sworn: 4 T. R. 473; or if a juror not regularly summoned and returned personate another. Willes, 484; S. C. Barnes, 453. In Pennsylvania, by statutory, provision, going on to trial will cure the defect, both in civil and criminal cases. 3d. The admission of illegal testimony. 3 Cowen’s Rep. 712 2 Hall’s R. 40. 4 Chit. Pr. 33 4th. The rejection of legal testimony. 6 Mod. 242; 3 B. & C. 494; 1 Bingh.

R. 38; 1 John. IR,. 508; 7 Wend. R. 371; 3 Mass. 124; 6 Mass. R. 391. But a new trial will not be granted for the rejection of a witness on the supposed ground of incompetency, when another witness establishes the same fact, and it is not disputed by the other side. 2 East, R. 451; and see other exceptions in 1 John. R. 509; 4 Ohio Rep. 49; 1 Charlt. B. 227; 2 John. Cas. 318. 5th. The misdirection of the judge. Vide article Misdirection, and 4 Chit. Pr. 38.

5. − 2. The acts of the prevailing party, his agents or counsel. For example, when papers, not previously submitted, are surreptitiously handed to the jury, being material on the point in issue. Co. Litt. 227; 1 Sid. 235; 4 W. C. C. R. 149. Or if the party, or one on his behalf, directly approach a juror on the subject of the trial. Cro. Eliz. 189; 1 Serg. & Rawle, 169; 7 Serg. & Rawle, 358; 4 Binn. 150; 13 Mass. R. 218; 2 Bay R. 94; 6 Greenl. R. 140. But if the other party is aware of such attempts, and he neglects to correct them when in his power, this will not be a sufficient reason for granting a new trial. 11 Mod. 118. When indirect measures have been resorted to, to prejudice the jury; 3 Brod. & Bing. 272; 7 Moore's R. 87; 7 East, R. 108; or tricks practiced; 11 Mod. 141; or disingenuous attempts to suppress or stifle evidence, or thwart the proceedings, or to obtain an unconscientious advantage, or to mislead the court and jury, they will be defeated by granting a new trial. Grah. N. T. 56; 4 Chit. Pr. 59.

6. − 3. The misconduct of the jury, as if they acted in disregard of their oaths; Cro. Eliz. 778; drinking spirituous liquors, after being charged with the cause; 4 Cowen's R. 26; 7 Cowen's R. 562; or resorting to artifice to get rid of their confinement; 5 Cowen's R. 283; and such like causes will avoid a verdict. Bunb. 51; Barnes, 438; 1 Str. 462; 2 Bl. R. 1299; Comb. 357; 4 Chit. Pr. 48 to 55. See, t's to the nature of the evidence to be received to prove misconduct of the jury, 1 T. R. 11; 4 Binn. R. 150; 7 S. & R. 458.

7. − 4. Cases in which the verdict is improper, because it is either void, against law, against evidence, or the damages are excessive. 1. When the verdict is contrary to the record; 2 Roll. 691; 2 Co. 4; or it finds a matter entirely out of the issue; Hob. 53; or finds only a part of the issue; Co. Litt. 227; or when it is uncertain; 8 Co. 65; a new trial will be granted. 2. When the verdict is. clearly against law, and injustice has been done, it will be set aside. Grah. N. T. 341, 356. 3. And so will a verdict be set aside if given clearly against evidence, and the presiding judge is dissatisfied. Grah. N. T. 368. 4. When the damages are excessive, and appear to have been given in consequence of prejudice, rather, than as an act of deliberate judgment. Grah. N. T. 410; 4 Chit. Pr. 63; 1 M. & G. 222; 39 E. C. L. R. 422.

8. − 5. Cases in which the party was deprived of his evidence by accident or because he was not aware of it. The non−attendance of witnesses, their mistakes, their interests, their infirmities, their bias, their partial or perverted views of facts, their veracity, their turpitude, pass in review, and in proportion as they bear upon the merits avoid or confirm the verdict. The absence of a material piece of testimony or the non−attendance of witnesses, contrary to reasonable expectation, and reasonably accounted for, will induce the court to set aside the verdict, and grant a new trial; 6 Mod. 22 11 Mod. 1; 2 Chit. Rep. 195; 14 John. R. 112; 2 John. Cas. 318; 2 Murph, R. 384; as, if the witness absent himself with out the party's knowledge after the cause is called on,; 14 John. R. 112; or is suddenly taken sick; 1 McClell. R. 179 and the like. The court will also grant a new trial, when the losing party has discovered material evidence since the trial, which would probably produce, a different result; this evidence must be accompanied by proof of previous diligence to procure it. To succeed, the applicant must show four things: 1. The names of the new witnesses discovered. 2. That the applicant has been diligent in preparing, his cage for trial. 3. That the new facts were discovered after the trial and will be important. 4. That the evidence discovered will tend to prove facts which were not directly in, issue on the trial, or were not then known and investigated by proof. 8 J. J. Marsh. R. 521; 2 J. J. Marsh. R. 52; 5 Serg. & Rawle, 41; 6 Greenl. R. 479; 4 Ohio Rep. 5; 2 Caines' R. 155; 2 W. C. C. R. 411; 16 Mart. Louis. Rep. 419; 2 Aiken, Rep, 407; 1 Haist. R. 434; Grah. N. T. ch. 13.

9. New trials may be granted in criminal as well as in civil cases, when the defendant is convicted, even of the highest offences. 3 Dall. R. 515; 1 Bay, R. 372; 7 Wend. 417; 5 Wend. 39. But when the defendant is acquitted, the humane influence of the law, in cases of felony, mingling justice with mercy, in favorem vitae et libertatis, does not permit a new trial. In cases of misdemeanor, after conviction a new trial may be granted in order to fulfil the purpose of substantial justice; yet, there are no instances of new trials after acquittal, unless in cases where the defendant has procured his acquittal by unfair practices. 1 Chit. Cr. Law, 654; 4 Chit. Pr. 80. Vide, generally, 21 Vin. Ab. 474 to 493; 3 Chit. Bl. Co 387, n.; 18 E. C. L. R. 74, 334; Bac. Ab. Trial, L; 1 Sell. Pr. 482; Tidd's Pr. 934, 939; Graham on New Trials 3 Chit. Pr. 47; Dane's Ab. h. t.; Com. Dig. Pleader, IR. 17; 4 Chitty's Practice, part 7, ch. 3. The rules laid down to authorize the granting of new trials in Louisiana, will be found in the Code of

Practice, art. 557 to 563.

NEW WORK. In Louisiana, by a new work is understood every sort of edifice or other work, which is newly commenced on any ground whatever.

2. When the ancient form of the work is changed, either by an addition being made to it, or by some part of the ancient work being taken away, it is styled also a new work. Civ. Code of Lo. 852; Puff. b. 8 , c. 5, SS 3; Nov. Rec. L. 1, tit. 32; Asso y Manuel, b. 2, tit. 6, p. 144.

NEW YORK. The name of one of the original states of the United States of America. ln its colonial condition this state was governed from the period of the revolution of 1688, by governors appointed by the crown assisted by a council, which received its appointments also from the parental government, and by the representatives of the people. 1 Story, Const. B. 1, ch. 10.

2. The present constitution of the state was adopted by a convention of the people, at Albany, on the ninth day of October, 1846, and went into force from and including the first day of January, 1847. The powers of the government are distributed among three classes of magistrates, the legislative, the executive, and the judicial;

3. − _1. The legislative power is vested in a senate and assembly. By the second article, section first, of the constitution, the qualifications of the electors are thus described, namely:: Every male citizen of the age of twenty− one years, who shall have been a citizen for ten days, and an inhabitant of this state one year next, preceding any election, and for the last four months a resident of the county where he may offer bis vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people; but such citizen shall have been for thirty days next preceding the election, a resident of the district from which the officer is to be chosen for whom he offers his vote. But no man of color, unless he shall have been for three years a citizen of this state, and for one year next preceding any election shall have been seised and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances, charged thereon, and shall have been actually rated and paid a tax thereon, shall be entitled to vote at such election. And no person of color shall be subject to direct taxation unless he shall be seised and possessed of such real estate as aforesaid.

4. The third article provides as follows Sect. 6. The members of the legislature sliall receive for their services, a sum not exceeding tbree dollars a day, from the commencement of the session; but such pay shall not exceed in the aggregate, three hundred dollars for per them allowance, except in proceedings for impeachment. The limitation as to the aggregate compensation shall not take effect until the year one thousand eight hundred and forty − eight. When convened in extra session by the governor, they shall receive three dollars per day. They sliall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting on the most usual route. The speaker of the assembly shall, in virtue of his office, receive an additional compensation equal to one−third of his per them allowance as a member.

Sect. 7. No member of the legislature shall receive any civil appointment within this state, or to the senate of the United States, from the governor, the governor and senate, or from the legislature, during the term for which he shall have been elected; and all such appointments, and all votes given for any such member, for any such office or appointment, shall be void. Sect. 8. No person being a member of congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature. And if any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Sect. 9. The elections of senators and members of assembly, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the legislature.

Sect. 10. A majority of each house shall constitute a quorum to do business. Each house sliall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members, shall choose its own officers, and the senate shall choose a temporary president, when the lieutenant. governor shall not attend as president, or shall act as governor.

Sect. 11. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Sect. 12. For any speech or debate in either house of the, legislature, the members shall not be questioned in any other place.

5. − 1. The senate consists of thirty − two members, chosen by the electors. The state is divided into thirty − two

districts, and each district elects one senator.

6. Senators are chosen for two years.

ÿ20 7. − 2. The assembly shall consist of one hundred and twenty−eight members. Art. 3, s. 2.

8. The state shall be divided into assembly districts as provided by the fifth section of the third article of the constitution as follows:

The members of assembly shall be apportioned among the several counties of this state, by the legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, and persons of color not taxed, and shall be chosen by single districts.

"The several boards of supervisors in such counties of this state, as are now entitled to more than one member of assembly, shall assemble on the first Tuesday of January next, and divide their respective counties into assembly districts equal to the number of members of assembly to which such counties are now severally entitled by law, and shall cause to be filed in the offices of the secretary of state and the clerks of their respective counties, a description of such assembly districts, specifying the number of each district and the population thereof, according to the last preceding state enumeration, as near as can be ascertained. Each assembly district shall contain, as nearly as may be, an equal number of inbabitants, excluding aliens and persons of color not taxed, and shall consist of convenient. and contiguous territory; but no town shall be divided in the formation of assembly districts.

"The legislature, at its first session after the return of every enumeration, shall re−apportion the members of assembly among the several counties of this state, in manner aforesaid, and the boards of supervisors in such counties as, may be entitled, under such reapportionment, to more than one member, shall assemble at such time as the legislature making such reapportionment shall prescribe, and divide such counties into assembly districts, in the manner herein directed and the apportionment and districts so to be made, shall remain unaltered until another enumeration shall be taken under the provisions of the preceding section.

"Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of the assembly, and no new county shall be hereafter erected, unless its population shall entitle it to a member.

" The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, be entitled to a member."

9. The members of assembly are elected annually.

10. − _2. The fourth article vests the executive power as follows:

" Sect. 1. The executive power shall be vested in a governor, who shall hold his office for two years; a lieutenant governor shall be chosen at the same time, and for the same term.

" Sect. 2. No person except a citizen of the United States, shall be eligible to the office of governor; nor shall any person be eligible to that office, who shall not have attained the age of thirty years, and who shall not have been five years next preceding his election, a resident within this state.

" Sect. 3. The governor and lieutenant governor shall be elected at the times and places of choosing members of the assembly. The persons respectively having the highest number of votes for governor and lieutenant governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant governor, the two houses of the legislature at its next annual session, shall, forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for governor or lieutenaut governor.

" Sect. 4. The governor shall be commander−in−chief of the military and naval forces of the state. He shall have power to convene the legislature (or the senate only) on extraordinary occasions. He shall communicate by message to the legislature at every session, the condition of the state, and recommend such matters to them as be shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures, as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall, at stated times, receive for his services, a compensation to be established by law, which shall neither be increased nor diminished after his election and during his continuance in office.

" Sect. 5. The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offences except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulation as may be provided by. law relative to the maniaer of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the Oft − − e shall be reported to the legislature at its next meeting, when the legislature shall

either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He sliall annually communicate to the legislature each case of reprieve, commutation or pardon granted stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

"Sect. 6. In case of the impeachment of the governor, of his removal from office, death, inability to discharge the powers and duties of the said office, resignation or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor for the residue of the term, or until the disability shall cease. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of a military force thereof, he shall continue commander−in−chief of all the military force of the state.

"Sect. 7. The lieutenant governor shall possess the same qualifications of eligibility for office as the governor. He shall be president of the senate, but shall have only a casting vote therein. If during a vacancy of the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the state, the president of the senate shall act as governor, until the vacancy be filled, or the disability shall cease.

"Sect. 8. The lieutenant governor shall, while acting as such, receive a compensation which shall be fixed by law, and which shall not be increased or diminished during his continuance in office.

"Sect. 9. Every bill which shall have passed the senate and assembly, shall, before it becomes a law, be presented to the governor; if be approve, he shall Sign it; but if not, he shall return it with his objections to that bouse in which it shall have originated; who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two−thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered: and if approved by two−thirds of all the members present, it shall become a law, notwithstanding the objections of the governor. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the flames of the members voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law."

11. − _3. The sixth article distributes the judicial power as follows:

"Sect. 1. The assembly shall have the power of impeachment, by the vote of a majority of all the members elected. The court for the trial of impeachments, shall be composed of the president of the senate, the senators, or a major part of them, and, the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court. No judicial officer shall exercise bis office after he shall have been impeached, until he shall have been acquitted. Before the trial of an impeachment, the members of the court shall take, an oath or affirmation, truly and impartially to try the impeachment, according to evidence; and no person shall be convicted without the concurrence of two−thirds of the members present. Judgment, in cases of impeachment, shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under this state; but the party impeached shall be liable to indictment, and punishment according to law.

"Sect. 2. There shall be a court of appeals, composed of eight judges, of whom four shall be elected by the electors of the state for eight years, and four selected from the class of justices of the supreme court, having the shortest time to serve. Provision shall be made by law, for designating one of the number elected, as chief judge, and for selecting such justices of the supreme court, from time to time, and for so classifying those elected, that one shall be elected every second year.

"Sect. 3. There shall be a supreme court having general jurisdiction in law and equity.

"Sect. 4. The state shall be divided into eight judicial districts, of which the city of New York shall be one: the others to be bounded by county lines. and to be compact, and equal in population, as rearly as may be. There shall be four justices of the supreme court in each district, and as many more in the district composed of the city of New York, as may from time to time be authorized by law, but not to exceed in the whole such number in proportion to its population, as shall be in conformity with the number of such judges in the residue of the state in proportion to its population. They shall be classified so that one of the justices of each district shall go out of office at the end of every two years. After the expiration of their terms under such classification, the term of their office shall be eight years.

"Sect. 5. The legislature shall have the same powers to alter and regulate the jurisdiction and proceedings in law and equity, as they have heretofore possessed.

"Sect. 6. Provisions may be made by law for designating, from time to time, one or more of the said justices, who is not a judge of the court of appeals, to preside at the general terms of the said court to be held in the several districts. Any three or more of the said justices, of whom one of the said justices so designated shall always be one, may hold: such general terms. And any one or more of the justices may hold special terms and circuit courts, and any one of them may preside in courts of oyer and terminer in any county.

"Sect. 7. The judges of the court of appeals and justices of the supreme court, shall severally receive, at stated times, for their services, a compensation to be established by law, which shall not be increased or diminished during their continuance in office.

"Sect. 8. They shall not hold any other office or public trust. All votes for either of them, for any elective office, (except that of justice of the supreme court, or judge of the court of appeals,) given by the legislature or the people, shall be void. They shall not exercise any power of appointment to public office. Any male citizen of the age of twenty−one years, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be entitled to admission to practice in all the courts of this state.

"Sect. 9. The classification of the justices of the supreme court; the times and place of holding the terms of the court of appeals, and of the general and special terms of the supreme court within the several districts, and the circuit courts and courts of oyer and terminer within the several counties, shall be provided for by law.

"Sect. 10. The testimony in equity cases shall be taken in like manner as in cases at law.

"Sect. 11. Justices of the supreme court and judges of the court of appeals, way be removed by concurrent resolution of both houses of the legislature, if two−thirds of all the members elected to the assembly, and a majority of all the members elected to the senate, concur therein. All judicial officers, except those mentioned in this section, and except justices of the peace, and judges and justices of inferior courts not of record, may be removed by the senate, on the recommendation of the governor: but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of, shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defence. On the question of removal, the ayes and noes shall be entered on the journals.

"Sect. 12. The judges of the court of appeals shall be elected by the electors of the state, ana the justices of the supreme court by the electors of the several judicial districts, at such times as may be proscribed by law.

"Sect. 13. In case the office of any judge of the court of appeals, or justice of the supreme court, shall becoine vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the governor, until it shall be supplied at the next general election of judges, when it shall be filled by election, for the residue of the unexpired term.

Sect. 14. There shall be elected in each of the counties of this state, except the city and county of New York, one county judge, who shall hold his office for four years. He shall hold the county court, and perform the duties of the office of surrogate. The county court shall have such jurisdiction in cases arising in justices' courts, and in special cases, as the legislature may prescribe, but shall have no original civil jurisdiction, except in such special cases.

"The county judge, with two justices of the peace, to be designated according to law, may hold courts of sessions, with such criminal jurisdiction as the legislature shall prescribe, and perform such other duties as may be required by law.

"The county judge shall receive an annual salary, to be fixed by the board of supervisors, which sliall be neither increased nor diminished during his continuance in office. The justices of the peace for services in courts of sessions, shall be paid a per diem allowance out of the county treasury.

"In counties having a population exceeding forty thousand, the legislature may provide for the election of a separate officer to perform the duties of the office of surrogate.

"The legislature may confer equity jurisdiction in special cases upon the county judge.

"Inferior local courts, of civil and criminal jurisdiction, may be established by the legislature in cities; and such courts, except for the cities of New York and Buffalo, shall have an uniform organization and jurisdiction in such cities.

"Sect. 15. The legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge, and of surrogate in cases of their

inability, or of a vacancy, and to exercise such other powers in special cases as may be provided by law.

"Sect. 16. The legislature may reorganize the judicial districts at the first session after the return of every enumeration under this constitution, in the manner provided for in the fourth section of this article, and at no other time; and they may, at such session, increase or diminish the number of districts, but such increase or diminution shall not, be more than one district at any one time. Each district shall have four justices of the supreme court; but no diminution of the districts shall have the effect to remove a judge from office.

"Sect. 17. The electors of the several towns shall, at their annual town meeting, and in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts, not of record, and their clerks, may be removed, (after due notice and an opportunity of being beard in their defence) by such county, city or state courts as may be prescribed by law, for causes to be assigned in the order of removal.

"Sect. 18. All judicial officers of cities and villages, and all such judicial officers is may be created therein by law, shall be elected at such times and in such manner as the legislature may direct.

"Sect. 19. The clerks of the several counties of this state shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law. A clerk for the court of appeals, to be ex officio clerk of the supreme court, and to keep his office at the seat of government, shall be chosen by the electors of the state; he shall hold his office for three years, and bis compensation shall be fixed by law and paid out of the public treasury.

"Sec. 20. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office.

"Sect. 21. The legislature may authorize the judgments, decrees and decisions of any local inferior court of record of original civil jurisdiction, established removed for review directly into the court of appeals.

"Sect. 22. The legislature shall provide for the speedy publication of all statute laws, and of such judicial decisions as it may deem expedient. And all laws and judicial decisions shall be free for publication by any person.

"Sect. 23. Tribunals of conciliation may be established, with such powers and duties as may be prescribed by law; but such tribunals shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference and agree to abide the judgment, or assent thereto, in the presence of such tribunal, in such cases as shall be prescribed by law."

"Sect. 25. The legislature, at its first session after the adoption of this constitution, shall provide for the organization of the court of appeals, and for transferring to it the business pending in the court for the correction of errors, and for the allowance of writs of error and appeals to the court of appeals, from the judgments and decrees of the present court of chancery and supreme court, and of the courts that may be organized under this constitution."

12. The sixth article, section 24, provides that the legislature, at its first session after the adoption of this constitution, shall provide for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify and abridge the rules and practice, pleadings, forms and proceedings of the courts of record of this state, and to report thereon to the legislature, subject to their adoption and modification from time to time.

13. In pursuance of the provisions of this section, commissioners were appointed to revise the laws on the subject of the practice, pleadings and proceedings of the courts of this state, who made a report to the legislature. This report, with some alterations, was enacted into a law on the 12th of April, 1848, ch. 379, by which the forms of action are abolished, and the whole subject is extremely simplified. How it will work in practice, time will make manifest.

NEWLY DISCOVERED EVIDENCE. That evidence which, after diligent search for it, was not discovered until after the trial of a cause.

2. In general a new trial will be granted on the ground that new, important, and material evidence has been discovered since the trial of the cause. 2 Wash. C. C. 411. But this rule must be received with the following qualifications: 1. When the evidence is merely cumulative, it is not sufficient ground for a new trial. 1 Sumn. 451; 6 Pick. 114; 4 Halst. 228; 2 Caines, 129; 4 Wend. 579; 1 A. K. Marsh. 151; 8 John. 84; 15 John. 210; 5 Ham. 375 10 Pick. 16; 7 W. & S. 415; 11 Ohio, 147; 1 Scamm. 490; 1 Green, 177; 5 Pike, 403; 1 Ashm. 141; 2 Ashm. 69; 3 Vei − in. 72; 3 A. K. Marsh. 104. 2. When the evidence is not material. 5 S. & R. 41; 1 P. A. Browne, Appx. 71; 1

A. K. Marsh. 151. 3. The evidence must be discovered after the trial, for if it be known before the verdict has been rendered, it is not newly discovered. 2 Sumn. 19; 7 Cowen, 369; 2 A. K. Marsh. 42. 4. The evidence must be such, that the party could not by due diligence have discovered it before trial. 2 Binn. 582; 1 Misso. 49; 5 Halst. 250; 1 South. 338; 7 Halst. 225; 1 Blackf. 367; 11 Con. 15; 1 Bay, 263, 491; 4 Yeates, 446; 2 Fairf. 218; 7 Metc. 478; Dudl. G. Rep. 85; 9 Shepl. 246; 14 Verm. 414, 558; 2 Ashm. 41, 69; 6 Miss. 600 2 Pike, 133 7 Yerg. 432; 6 Blackf. 496; 1 Harr. 410.

NEWSPAPERS. Papers for conveying news, printed and distributed periodically.

2. To encourage their circulation the act of congress of March 3, 1825, 3 Story's L. U. S. 1994, enacts, _29. That every printer of newspapers may rend one paper to each and every other printer of newspapers within the United States, free of postage, under such regulations as the postmaster general shall provide.

3. − _30. That all newspapers conveyed in the mail shall be under cover, open at one end, and charged with the postage of one cent each, for any distance not more than one hundred miles, and one and a half cents for any greater distance: Provided That the postage of a single newspaper, from any one place to another, in the same state, shall not exceed one cent, and the postmaster general shall require those who receive newspapers by post, to pay always the amount of one quarter's postage in advance; and should the publisher of any newspaper, after being three mouths previously notified that his paper is not taken out of the office, to which it is sent for delivery, continue to forward such paper in the mail, the postmaster to whose office such paper is sent, may dispose of the same for the postage, unless the publisher shall pay it. If any person employed in any department of the post office, shall improperly detain, delay, embezzle, or destroy any newspaper, or shall permit any other person to do the like, or shall open or permit any other to open, any mail, or packet of newspapers, not directed to the office where he is employed, such offender shall, on conviction thereof, forfeit a sum, not exceeding fifty dollars, for every such offence. And if any other person shall open any mail or packet of newspapers, or shall embezzle or destroy the same, not − being directed to such person, or not being authorized to receive or open the same, such offender shall, on the conviction thereof, pay a sum not exceeding twenty dollars for every such offence. And if any person shall take, or steal, any packet, bag, or mail of newspapers, from, or out of any post office, or from any person having custody thereof, such person shall, on conviction, be imprisoned, not exceeding three mouths, for every, such offence, to be kept at hard labor during the period of such imprisonment. If any person shall enclose or conceal a letter, or other thing, or any memorandum in writing, in a newspaper, pamphlet, or magazine, or in any package of newspapers, pamphlets, or magazines, or make any writing or memorandum thereon, which he shall have delivered into any post office, or to any persou for that purpose, in order that the same may be carried by post, free of letter postage, he shall forfeit the sum of five dollars for every such offence; and the letter, newspaper, package, memorandum, or other thing, shall not be delivered to the person to whom it is directed, until the amount of single letter postage is paid for each article of which the package is composed. No newspapers shall be received by the postmasters, to be conveyed by post, unless they are sufficiently dried and enclosed in proper wrappers, on which, besides the direction, shall be noted the number of papers which are enclosed for subscribers, and the number for printers: Provided, That the number need hot be endorsed, if the publisher shall agree to furnish the postmaster, at the close of each quarter, a certified statement of the number of papers sent in the mail, chargeable with postage. The postmaster general, in any contract he may enter into for the conveyance of the mail, may authorize the person with whom such contract is to be made, to carry newspapers, magazines, and pamphlets, other than those conveyed in the mail: Provided, That no preference shall be given to the publisher of one newspaper over that of another, in the same place. When the mode of conveyance, and size of the mail, will admit of it, such magazines and pamphlets as are published periodically, may be transported in the mail, to subscribers, at one and a half cents a sheet, for any distance riot exceeding one hundred miles, and two and a half cents for any greater distance. And such magazines and pamphlets as are not published periodically, if sent in the mail, shall be charged with a postage of four cents on each sheet, for any distance not exceeding one hundred miles, and six cents for any greater distance. By the act of March 3, 1851, c. 20, s. 2, it is enacted, That all newspapers not exceeding three ounces in weight sent from the office of publication to actual and bona fide subscribers, shall be charged with postage is follows, to wit weekly only, within the county where published, free; for any distance not exceeding fifty miles out of the county, five cents per quarter; exceeding fifty, and not exceeding three hundred miles, ten cents per quarter; exceeding three bundred and not exceeding one thousand miles, fifteen cents per quarter; exceeding one thousand and not exceeding two thousand miles, twenty cents per quarter exceeding two thousand and not exceeding four thousand, twenty−five cents per quarter; exceeding four

thousand miles, thirty cents per quarter; newspapers published monthly, sent to actual and bona fide subscribers, one−fourth the foregoing rates; published semi−monthly, one−half the foregoing rates; semi−weekly, double those rates; tri−weekly, treble those rates; and oftener than tri−weekly, five times those rates; Provided, That newspapers not containing over three hundred square inches may be transmitted at one−fourth the above rates. See, as to other newspapers, Postage.

NEXT FRIEND. One who, without being regularly appointed guardian, acts for the benefit of an infant, married woman, or other person, not sui juris. Vide Amy; Prochein Amy.

NEXT OF KIN. This term is used to signify the relations of a party who has died intestate.

2. In general no one comes within this term who is not included in the provisions of the statutes of distribution. 3 Atk. 422, 761; 1 Ves. sen. 84. A wife cannot, in general, claim as next of kin of her husband, nor a husband as next of kin of his wife. But when there are circumstances in a will which induce a belief of an intention to include them under this term, they will be so considered, though in the ordinary sense of the word, they are not. Hov. Fr. 288, 9; 1 My. & Keen, 82. Vide Branch; Kindred; Line.

NEXUM, Rom. civ. law. Viewed as to its object and legal effect, nexum was either the transfer of the ownership of a thing, or the transfer of a thing to a creditor as a security. Accordingly in one sense nexum included mancipium, in another sense mancipium and nexum are opposed in the same way in which sale and mortgage or pledge are opposed. The formal part of both transactions consisted in a transfer per Des et libram. The person who became nexus by the effect of a nexum, placed himself in a servile condition, not becoming a slave, his ingenuitas being only in suspense, and was said nexum inire. The phrases nexi datio, nexi liberatio, respectively express the contracting and the release from the obligation.

2. The Roman law, as to the payment of borrowed money, was very strict. A curious passage of Gellius (xx. 1) gives us the ancient mode of legal procedure in the case of debt as fixed by the Twelve Tables. If the debtor admitted the debt, or bad been condemned in the amount of the debt by a judex, he had thirty days allowed him for payment. At the expiration of this time he was liable to the manus. injectio, and ultimately to be assigned over to the creditor (addictus) by the sentence of the praetor. The creditor was required to keep him for sixty days in chains, during which time he publicly exposed the debtor, on three nundinae, and proclaimed the amount of bis debt. If no person released the prisoner by paying the debt, the creditor might sell him as a slave or put him to death. If there were several debtors, the letter of the law allowed them to cut the debtor in pieces, and take their share of his body in proportion to their debt. Gellius says that there was no instance of a creditor ever having adopted this extreme mode of satisfying his debt. But the creditor might treat the debtor, who was addictus, as a slave, and compel him to work out his debt, and the treatment was often very severe. In this passage Gellius does not speak of nexi but only of addicti, which is sometimes alleged as evidence of the identity of nbxus and addictus, but it proves no such identity. If a nexus is what he is here supposed to be, the laws of the Twelve Tables could not apply; for when a man became nexus with respect to one creditor, he could not become nexus to another; and if he became nexus to several at once, in this case the creditors must abide by their contract in taking a joint security. This law of the Twelve Tables only applied to the case of a debtor being @igned over by a judicial sentence to several debtors, and it provided for a settlement of their conflicting claims. The precise condition of a nexus has, however, been a subject of much dinussion among scholars. Smith, Dict. Rom. & Gr. Antiq. h. v., and vide Mancipitem.

NIECE, domestic relations: The daughter of a person’s brother or sister. Amb. 514; 1 Jacob’s Ch. R. 207.

NIEF, old Eng. law. A woman born in vassalage. In Latin she was called Nativa.

NIENT COMPRISE. Not included. It is an exception taken to a petition, because the thing desired is not contained in that deed or proceeding wltereoia the petition is founded. Touil. Law Dict.

NIENT CULPABLE. Nof guilty the name of a plea used to deny any charge of ao r@al nature, or of a tort.

NIE’@QT DEDIRE. To say nothing.

2. These words are used to signify that judgment be rendered ag@ a party, because he does not deny the cause of action, i. e. by default.

3. When a fair and impartial trial cannot be had in the county where the venue is laid, the practice in the English courts is, on an affidavit of the eirculustances, to change it in transitory actions; or in local actions they will give leave to enter a suggestion on the roll, with a nient dedire, in order to have the trial in another country. 1 Tidd’s Pr. 655, 8th ed.

NIENT LE FAIT, pleading. The same as non est factum, a plea by which the defendant asserts that the deed

declared upon is not his deed.

NIGHT. That space of time during which the sun is below the horizon of the earth, except, that short space which precedes its rising and follows its setting, during which, by its light, the countenance of a man may be discerned. I Hale, P. C. 550; 3 Inst. 63; 4 Bl. Com. 224; 1 Hawk. P. C. 101; 3 Chit. Cr− Law, 1093; 2 Leach, 710; Bac. Ab. Burglary, D; 2 East, P. C. 509; 2 Russ. Cr. 32; Rosc. Cr. Ev. 278; 7 Dane's Ab. 134.

NIGHT WALKERS. Persons who sleep by day and walk by niggt 5 E. Ill. c. 14; that is, persons of suspicious appearance and demeanor, who walk by night.

2. Watchmen may undoubtedly arrest them, and it is said that private persons may also do so. 2 Hawk. P. C. 120; but see 3 Taunt. 14,; Ham. N. P. 135. Vide 15 Vin. Ab. 655; Dane's Ab. Index, h. t.

NIHIL CAPIAT PER BREVE, practice. That he take nothing by his writ. This is the judgment against the plaintiff in an action, either in bar or in abatement. When the plaintiff has commenced his proceedings by bill, the judgment is nihil capiat per billam. Co. Litt. 363.

NiHIL DICIT. He says nothing. It is the failing of the defendant to put in a plea or answer to the plaintiff's declaration by the day assigned; and in this case judgment is given against the defendant of course, as he says nothing why it should not. Vide 15 Vin. Ab. 556; Dane's Ab. Index, h. t.

NIHIL HABET. The name of a return made by a sheriff, marshal, or other proper officer, to a scire facia.9 or other writ, when he Ims not been able to, serve it on the defendant. 5 Whart. 367.

2. Two returns of nihil are in general equivalent to a service. Yelv. 112; 1 Cowen, 70; 1 Car. Law Regags. 491; 4 Blackf. 188; 2 Binn. 40.

NIL DEBET, pleading. The general issue in debt,6r simple contract. It is in the following form: IcAndthesaideD, by E F, his attorney, comes and defends the wrong and injury, when, &c. and says, that he does not owe the said sum of money above demanded, or any part thereof, in manner and form as the said A B hath above complained. And of this the said C, D puts himself upon the country." When, in debt on specially, the deed is the only iuducernent to the action, the general issue is nil debet. Stephens on Pleading, 174, n.; Dane's Ab. Index, h. t.

NIL HABUIT IN TENEMENTIS, pleading. A plea by which the defendant, wbo is sued by his landlord in debt for rent uppa−a lease, but by deed indented, by,which he denies his landlord's title to the premises, that he has no interest in the tenements. 2 Lill. Ab. 214; 12 Vin. Ab. 184; 15 Vin. Ab. 556 Woodf. L. & T. 330; Com. Dig. Pleader, 2 W 48 Co. Litt. 47 b; Dane's Ab. Index, h. t. 3 E. C. L. R. 169, n.; 1 Holt's R. 489.

NISI. This word is frequently used in legal proceedings to denote that something has been done, which is to be valid unless something else Shall be done within a certain time to defeat it. For example, an order may be made that if on the day appointed to show cause, none be shown, an injunction will be dissolved of course, on motion, and production of an affidavit of service of the order. This is called an order nisi. Ch. Pr. 547. Under the compulsory arbitration law of Pennsylvania, on the filing of the award, judgment nisi is to be entered: which judgment is to be as valid as if it had been rendered on the verdict of a jury, unless an appeal be entered within the time required by the law.

NISI PRIUS. These words, which signify 'unless before,' are the name of a court. The name originated as follows: Formerly, an action was triable only in the court where it was brought. But, it was provided by Magna Charta, in ease of the subject, that assises of novel disseisin and mort d'ancestor (then the most usual remedies,) should thenceforward instead of being tried at Westminster, in the superior court, be taken in their proper counties; and for this purpose justices were to be sent into every county once a year, to take these assises there. 1 Reeves, 246; 2 Inst. 422, 3, 4. These local trials being found convenient, were applied not only to assises, but to other actions; for, by the statute of 13 Edw. I. c. 30, it is provided as the general course of proceeding, that writs of venire for summoning juries in the superior courts, shall be in the following form. Praecipimus tibi quod veneri facias coram justiciariis nostris apud Westm. in Octabis Seti Michaelis, nisi talis et talis tali, die et loco ad partes illas venerint, duodecim, &c. Thus the trial was to be had at Westminster, only in the event of its not previously taking place in the county, before the justices appointed to take tlie assises. It is this provision of the statute of Nisi Prius, enforeed by the subsequent statute of 14 Ed. III. c. 16, which authorizes, in England, a trial before the justices of assises, in lieu of the superior court, and gives it the name of a trial by nisi prius. Steph. Pl. App. xxxiv.; 3 Bl. Com. 58; 1 Reeves, 245, 382; 2 Reeves, 170; 2 Com. Dig. Courts, D b, page 316.

2. Where courts bearing this name exist in the United States, they are instituted by statutory provision. 4 W. & S. 404.

NISI PRIUS ROLL, Eng. practice. A transcript of a case made from the plea roll, and includes the declaration,

plea, replication, rejoinder, &c. and the issue. Eunom. Dial. 2, _28, 29, p. 110, 111. After the nisi prius roll is returned from the trial, it assumes the name of posted. (q. v.)

NO AWARD. The name of a plea to an action or award. 1 Stew. 520; f Chip. R. 131; 3 Johns. 367. See Nul. Agard.

NO BILL. These words are frequently used by grand juries. They are endorsed on a bill of indictment when the grand jury have not sufficient cause for finding a true bill. They are equivalent to Not found, (q. v.) or Ignoramus. (q. v.) 2 Nott & McC. 558.

NOBILITY. An order of men in several countries to whom privileges are granted at the expense of the rest of the people.

2. The constitution of the United States provides that no state shall " grant any title of nobility; and no person can become a citizen ot' the United States until he has renounced all titles of nobility." The Federalist, No. 84; 2 Story, Laws U. S. 851. 3. There is not in the constitution any general prohibition against any citizen whomsoever, whether in public or private life, accepting any foreign title of nobility. An amendment of the constitution in this respect has been recommended by congress, but it has not been ratified by a sufficient number of states to make it a part of the constitution. Rawle on the Const. 120; Story, Const. _1346.

NOLLE PROSEQUI, practice. An entry made on the record, by which the prosecutor or plaintiff declares that he will proceed no further.

2. A nolle prosequi may be entered either in a criminal or a civil case. In criminal cases, a nolle prosequi may be entered at any time before the finding of the grand jury, by the attorney general, and generally after a true bill has been found; in Pennsylvania, in consequence of a statutory provision, no nolle prosequi can be entered after a bill has been found, without leave of the court, except in cases of assault and battery, fornication and bastardy, on agreement between the parties, or in prosecutions for keeping tippling houses. Act of April 29, 1819, s. 4, 7 Smith's Laws, 227.

3. A nolle prosequi may be entered as to one ot several defendants. 11 East, R. 307.

4. The effect of a nolle prosequi, when obtained, is to put the defendant without day, but it does not operate as an acquittal; for he may be afterwards reindicted, and even upon the same indictment, fresh process may be awarded. 6 Mod. 261; 1 Salk . 59; Com. Dig. Indictment. K; 2 Mass. R. 172.

5. In civil cases, a nolle prosequi is considered, not to be of the nature of a retraxit or release, as was formerly supposed, but an agreement only, not to proceed either against some of the defendants, or as to part of the suit. Vide 1 Saund. 207, note 2, and the authorities there cited. 1 Chit. PI. 546. A nolle prosequi is now held to be no bar to a future action for the same cause, except in those cases where, from the nature of the action, judgment and execution against one, is a satisfaction of all the damages sustained by the plaintiff. 3 T. R. 511; 1 Wils. 98.

6. In civil cases, a nolle prosequi may be entered as to one of several counts; 7 Wend. 301; or to one of several defendants; 1 Pet. R. 80; as in the case of a joint contract, where one of two defendants pleads infancy, the plaintiff may enter a nolle prosequi, as to him, and proceed against the other. 1 Pick. 500. See, generally, 1 Pet. R. 74; see 2 Rawle, 334; 1 Bibb, 337; 4 Bibb, 887, 454; 3 Cowen, 374; 5 Gill & John. 489; 5 Wend. 224; 20 John. 126; 3 Cowen, 335; 12 Wend. 110; 3 Watts, 460.

NOMEN COLLECTIVUM. This expression is used to signify that a word in the singular number is to be understood in the plural in certain cases.

2. Misdemeanor, for example, is a word of this kind, and when in the singular, may be taken as nomen collectivum, and including several offences. 2 Barn. & Adolp. 75. Heir, in the singular, sometimes includes all the heirs.

NOMEN GENERALISSIMUM. A name which applies generally to a number of things; as, land, which is a general name by which everything attached to the freehold will pass.

NOMINAL. Relating to a name.

2. A nominal plaintiff is one in whose name an action is brought, for the use of another. In this case, the nominal plaintiff has no control over the action, nor is he responsible for costs. 1 Dall. 1 39; 2 Watts, R. 12.

3. A nominal partner is one, who, without having an actual interest in the profits of a concern, allows his name to be used, or agrees that it shall be continued therein, as a partner; such nominal partner is clearly liable to the creditors of the firm, as a general partner, although the creditors were ignorant at the time of dealing, that his name was used.. 2 H. Bl. 242, 246; 1 Esp. R. 31; 2 Campb. 302; 16 East, R. 174; 2 B. & C. 411.

NOMINAL PLAINTIFF. One who is named as the plaintiff in an action, but who has no interest in it, having

assigned the cause or right of action to another, for whose use it is brought.

2. In general, he cannot interfere with the rights of his assignee, nor will he be permitted to discontinue. the action, or to meddle with it. 1 Wheat. R. 233; 1 John. Cas. 411; 3 John. Cas. 242; 1 Johns. R. 532, n.; 3 Johns. R. 426; 11 Johns. R. 47; 12 John. R. 237; 1 Phil. Ev. 90; Cowen's note 172; Greenl. Ev. SS 173; 7 Cranch, 152.

NOMINATE CONTRACT, civil law. Nominate contracts are those which have a particular name to distinguish them; as, purchase and sale, hiring, partnership, loan for use, deposit, and the like. Dig. 2, 14, 7, 1. Innominate contracts, (q. v.) are those which have no particular name. Dig. 19, 4, 1, 2 Code, 4, 64, 3.

NOMINATION, This word has several significations. 1. An appointment; as, I nominate A B, executor of this my last will. 2. A proposition; the word nominate is used in this sense in the constitution of the United States, art. 2, s. 2, the president "shall nominate, and by and with the consent of the senate, shall appoint ambassadors," &c.

NOMINE POENAE, contracts. The name of a penalty incurred by the lessee to the lessor, for the non−payment of rent at the day appointed by the lease or agreement for its payment. 2 Lill. Ab. 221. It is usually a gross sum of money, though it may be any thing else, appointed to be paid by the tenant to the reversioner, if the duties are in arrear, in addition to the duties themselves. Ham. N. P. 411, 412.

2. To entitle himself to the nomine paenae, the landlord must make a demand of the rent on the very day, as in the case of a reentry. 1 Saund. 287 b, note; 7 Co. 28 b Co. Litt. 202 a; 7 T. R. 11 7. A distress cannot be taken for a nomine paenae, unless a special power to distrain be annexed to it by deed. 3 Bouv. Inst. n. 2451. Vide Bac. Ab. Rent, K 4; Woodf. L. & T. 253; Tho. Co. Litt. Index, h. t.; Dane's Ab. Index, h. t.

NOMINEE. One who has been named or proposed for an office.

NON. Not. When prefixed to other words, it is used as a negative as non access, non assumpsit.

NON ACCEPTAVIT. The name of a plea to an action of assumpsit brought against the drawee of a bill of exchange upon a supposed acceptance by him. See 4 Mann. & Gr. 561; S. C. 43 E. C. L. R. 292.

NON ACCESS. The non existence of sexual intercourse is generally expressed by the words " non access of the husband to the wife which expressions, in a case of bastardy, are understood to mean the same thing. 2 Stark Ev. 218, n.

2. In Pennsylvania, when the husband has access to the wife, no evidence short of absolute impotence of the husband, is sufficient to convict a third person of bastardy with tlie wife. 6 Binn. 283.

3. In the civil law the maxim is, Pater is est quem nupticae demonstrant. Toull. tom. 2, n. 787. The Code Napoleon, art. 312, enacts, " que l'enfant concu pendant le mariage a pour pere le mari." See also 1 Browne's R. Appx. xlvii.

4. A married woman cannot prove the non access of her husband. Id. See 8 East, 202; 4 T. R. 251; 11 East, 132; 13 Ves. 58; 8 East, R. 193; 12 East, R. 550; 4 T. R. 251, 336; 11 East, R. 132; 6 T. R. 330.

NON AGE. By this term is understood that period of life from the birth till the arrival of twenty−one years. In another sense it means under the proper age to be of ability to do a particular thing; as, when non age is applied to one under the age of fourteen, who is unable to marry.

NON ASSUMPSIT, pleading. The general issue in trespass on the case, in the species of assumpsit. Its form is, "And the said C D, by E F, his attorney, comes and defends the wrong and injury, when, &c., and says, that he did not undertake or promise in manner and form as the said A B, hath above complained. And of this he puts himself upon the country."

2. Under this plea almost every matter may be given in evidence, on the ground, it is said, that as the action is founded on the contract, and the injury is tlie non, performance of it, evidence which disaffirms the obligation of the contract, at the time when the action was commenced, goes to the gist of the action. Gilb. C. P. 6 5; Salk. 27 9; 2 Str. 738; 1 B. & P. 481. Vide 12 Vin. Ab. 189; Com Dig. Pleader, 2 G 1.

NON ASSUMPSIT INFRA SEX ANNOS. The name of a plea by which the defendant avers that he did not assume to perform the assumption charged in the declaration within six years.

2. The act of limitation bars the recovery of a simple contract debt after six years; when a defendant is sued on such a contract, and it is more than six years since he entered into the contract, he pleads this plea by the following formula: " and saith that the aforesaid plaintiff the action aforesaid hereof against him he ought not to have, because he saith that he did not undertake, &c., and this he is ready to verify." Vide ddio non accrevit infra sex annos.

NON BIS IN IDEM, civil law. This phrase signifies that no one shall be twice tried for the same offence; that is, that when a party accused has been once tried by a tribunal in the last resort, and either convicted or acquitted, he

shall not again be tried. Code 9, 2, 9 & 11. Merl. RŠpert. h. t. Vide art. Jeopardy.

NON CEPIT MODO ET FORMA, pleading. The general issue in replevin. Its form is, "And the said C D, by E F, his attorney, comes and defends the wrong and injury, when, &c., and says, that he did not take the said cattle, (or ’ goods and chattels,’ according. to the subject of the action,) in the said declaration mentioned or any of them, in manner and form as the said A B hath above complained. And of this the said C D puts himself upon the country."

2. This issue applies to a case where the defendant has not, in fact, taken the cattle or goods, or where he did not take them, or have them in the place mentioned in the declaration. The declaration alleges that the defendant " took certain cattle or goods of the plaintiff, in a certain place called," &c.; and the general issue states, that he did not take the said cattle or goods, −− in manner and form as alleged;" which involves a denial of the taking and of the place in which the taking was alleged to have been, the place being a material point in this action. Steph. PI. 183, 4; 1 Chit. Pl. 490.

NON CLAIM. An omission or neglect by one entitled to make a demand within the time limited by law; as, when a continual claim ought to be made, a neglect to make such claim within a year aud a day.

NON COMPOS MENTIS, persons. These words signify not of sound mind, memory, or understanding. This is a generic term, and includes all the species of madness, whether it arise from, 1, idiocy; 2, sickness 3, lunacy or 4, drunkenness. Co. Litt. 247; 4 Co. 124; 1 Phillim. R. 100; 4 Com. Dig. 613; 5 Com. Dig. 186; Shelf. on Lunatics, 1; and the articles Idiocy; Lunacy.

NON CONCESSIT, Eng. law. The name of a plea by which the defendant denies that the crown granted to the plaintiff by letters patent, the rights which he claims as a concession from the king; as, for example, when a plaintiff sues another for the infringement of his patent right, the defendant way deny that the crown has granted him such a right.

2. The plea of non concessit does not deny the grant of a patent, but of the patent as described in the plaintiff’s declaration. 3 Burr. 1544; 6 Co. 15, b.

NON CONFORMISTS English law. A name given to certain dissenters from the rites and ceremonies of the church of England.

NON CONSTAT. It does not appear. These words are frequently used, particularly in argument; as, it was moved in arrest of judgment that the declaration was not good, because non constat whether A B was seventeen years of age when the action was commenced. Sw. pt. 4, SS 22, p. 331.

NON CULPABILLS, pleading. Not guilty. (q. v.) It is usually abbreviated non cul. 16 Vin. Ab. 1.

NON DAMNIFICATUS, pleading. A plea to an action of debt on a bond of indemnity, by which the defendant asserts that the plaintiff has received no damage; in other words that he is not damnified. 1 B. & P. 640, n. a; 1 Taunt. R. 428; 1 Saund. 116, n. 1; 2 Saund. 81; 7 Wentw. PI. 615, 616; 1 H. Bl. 253; 2 Lill. Ab. 224; 14 John R. 177; 5 John. R. 42; 20 John. Rep. 153; 3 Cowen, R. 313; 10 Wheat R. 396, 405; 3 Halst. R. 1.

NON DEDIT, pleading. The general issue in formedom. See Ne dona pas.

NON DEMISIT, pleading. A plea proper to be pleaded to an action of debt for rent, when the plaintiff declares on a parol lease. Gilb. Debt, 436, 438; Bull. N. P. 177; 1 Chit. Pl. 477.

2. It is improper to plead such plea when the demise is stated to have been by indenture. Id.; 12 Vin. Ab. 178; Com. Dig. Pleader, 2 W 48.

NON DETINET, pleading. The general issue in an action of detinue. Its form is as follows:: And the said C D, by E F, his attorney, comes and defends the wrong and injury, when, &c., and says, that he does not detain the said goods and chattels (or, deeds and writings,’ according to the subject of the action,) in the said declaration specified, or any part thereof, in manner and form as the said A B bath above complained. And of this the said C D puts himself upon the country."

2. In debt on simple contract, in the case of executors and administrators, instead of pleading nil debet, the plea should be "doth, not detain.". 6 East, R. 549; Bac. Abr. Pleas, I; 1 Chit. PI. 476. 3. The plea of non detinet merely puts iii issue the simple fact of detainer; when the defendant relies upon a justifiable detainer, he must plead it specially. 8 D. P C. 347.

NON EST FACTUM, pleading. The general issue in debt on bond or other specialty, and is, in form, as follows: I " And the said C D, by E F, his attorney, conies and defends the wrong and injury, when, &c., and says, that the said supposed writing obligatory, (or ’indenture,’ or ’articles of agreement,’ according to the subject of the action,) is not his deed. And of this he puts himself upon the country." 6 Rand. Rep. 86; 1 Litt. R. 158.

2. Though non est factum is, in most cases, the general issue in debt on specialty, yet, when the deed is only inducement to the action, the general issue is nil debet. Steph. Pl. 174, n.

3. In covenant tlie general issue is non est factum; and its form is similar to that in debt on a specialty. Id. 174. It is, however, said, that in covenant there is, strictly speaking, no general issue, as the plea of non est factum only puts tlie deed in issue, as in debt on a specialty, and not the breach of covenant or any other matter of defence. 1 Chit. PI. 482. See generally, 1 Harring. R. 230; 6 Munf. R. 462; Minor, R. 103; 1 Harr. & Gill, 324; 13 John. R, 430; 12 John. R. 337; 2 N. H. Rep. 74; 4 Wend. R. 519; 2 N. & M. 492. See Issint; Special non est factum.

NON EST INVENTUS, practice. The sheriff's return to a writ requiring him to ,arrest the person of the defendant, which signifies that he is not to be found within his jurisdiction. The return is usually abbreviated N. E. I. Chit. Pr. Index, L. t.

NON FEASANCE, torts, contracts. The non−performance of some act which ought to be performed.

2. When a legislative act requires a person to do a thing, its non feasance will subject the party to punishment; as, if a statute require the supervisors of the highways to repair such highways, tlie neglect to repair them may be punished. Vide 1 Russ. on Cr. 48.

3. Mere non−feasance does not imply malice; this is strongly exemplified in the case of a plaintiff, who, having issued a writ of capias against his debtor, afterwards received the debt, and neglected to countermand tlie writ, in consequence of which the defendant was afterwards arrested. On a suit brought by the former defendant against tlie former plaintiff, it was held that the law did not impose on the first plaintiff the duty of countermanding his writ. If he had refused to give the countermand when requested, it might have been evidence of malice, but in such case there would have been something beyond mere non−feasance, an actual refusal. 1 B & P. 388; 3 East, R. 314; 2 Bos. & P. 129.

4. There is a difference between nonfeasance and misfeasance, (q. v.) or malfeasance. (q. v.) Vide 2 Kent, Com. 443 Story on Bailm. _9, 165; 2 Vin. Ab. 35 1 Hawk. P. C. 13; Bouv. Inst. Index, h. t.

NON FECIT. He did not make it. The name of a plea, for example, in an action of assumpsit on a promissory note. 3 Mann. Gr. 446.

NON FECIT VASTUM CONTRA PROHIBITIONEM. The name of a plea to an action founded on a writ of estrepement, that the defendant did not commit waste contrary to the prohibition. 3 Bl. Com. 226, 227.

NON INFREGIT CONVENTIONEM, pleading. A plea in an action of covenant. This plea is not a general issue, it merely denies that the defendant has broken the covenants on which he is sued. It being in the negative, it cannot be used where the breach is also in the negative. Bac Ab. Covenant L; 3 Lev. 19; 2 Taunt. 278; 1 Aik. R. 150; 4 Dall. 436; 7 Cowen, R. 71.

NON JOINDER, pleading, practice. The omission of some one of the persons who ought to have been made a plaintiff or defendant along with others is called a non joinder.

2. In actions upon contracts, where the contract has been made, with several, if their interest were joint, they miist all, if living, join in the action for its breach. 8 S., & R. 308; 10 S. & R. 257; Minor, 167; Hardin, 508. In such case the non joinder must be pleaded in abatement. Id.; 3 Bouv. Inst. n. 2749.

NON JURORS, English law. Persons who refuse to take the oaths, required by law, to support the government. 1 Dall. 170.

NON LIQUET. It is not clear.

NON MODERATE CASTIGAVIT. The name of a faulty replication to a plea of moderate castigavit. (q. v.) This replication, in such a case, is a negative. pregnant. Gould, PI. ch. 7, SS 37.

NON OBSTANTE, Engl. law. These words, which literally signify notwithstanding, are used to express the act of the English king, by which he dispenses with the law, that is, authorizes its violation.

2. He cannot by his license or dispensation make an offence dispunishable which is malum in se; but in certain matters which are mala prohibita, be may, to certain persons and on special occasions, grant a non obstante. 1 Th. Co. Litt. 76, n. 19; Vaugh. 330 to 359; Lev. 217; Sid. 6, 7; 12 Co. 18; Bac. Ab. Prerogative, D. 7. Vide Judgment non obstante veredicto.

NONOBSTANTEVEREDICTO. Notwithstanding the verdict. See Judgment non obstante veredicto.

NON OMITTAS, English practice. The name of a writ directed to the sheriff Where the bailiff of a liberty or franchise, who has the return of writs, neglects or refuses to serve a process, this writ issues commanding the sheriff to enter into the franchise and execute the process himself, or by bis officer, non omittas propter aliquam libertatem. For the despatch of business a non omittas is commonly directed in

the first instance. 3 Chit. Pr. 190, 310.

NON PROS, or NON PROSEQUITUR. The name of a judgment rendered against a plaintiff for neglecting to prosecute his suit agreeably to law and the rules of the court. Vide Grah. Pr. 763; 3 Chit. Pr. 910; 1 Sell. Pr. 359; 1 Penna. Pr. 84; Caines' Pr. 102; 2 Arch. Pr. 204 and article Judgment of Non Pros.

NON RESIDENCE, eccles. law. The absence of spiritual persons from their benefices.

NON SUBMISSIT. The name of a plea to an action of debt or a bond to perform an award, by which the defendant pleads that he did not submit. Bac. Ab. Arbitr. &c., G.

NON SUM INFORMATUS, pleading. I am not informed. Vide lnformatus non SUM.

NON TENENT INSIMUL, pleadings. A plea to an action in partition, by which the defendant denies that he holds the property, which is the subject of the suit, together with the complainant or plaintiff.

NON TENUIT. He did not hold. The name of a plea in bar in replevin, when the plaintiff has avowed for rent arrear, by which the plaintiff avows that he did not hold in manner and form as the avowry alleges.

NON TENURE, pleading. A plea in a real action, by which the defendant asserted, that he did not hold the land, or at least some part of it, as mentioned in the plaintiff's declaration. 1 Mod. 250.

2. Non tenure is either a plea in bar or a plea in abatement. 14 Mass. 239; but see 11 Mass. 216. It is in bar, when the plea goes to the tenure, as when the tenant denies that he holds of the defendant, and says he holds of some other person, But when the plea goes to the tenancy of the land, as when the defendant pleads that be is not the tenant of the land, it is in abate, ment only. Id.; Bac. Ab. Pleas, &c., I 9.

NON TERM. The vacation between two terms of a court.

NON USER. The neglect to make use of a thing.

2. A right which may be acquired by use, may be lost by non−user, and an absolute discontinuance of the use for twenty years affords presumption of the extinguishment of the right, in favor of some others adverse right. 5 Whart. Rep. 584; 23 Pick. 141. 3. As an enjoyment for twenty years is necessary to found the presumption of a grant of an easement, the general rule is, there must be a similar non−user to raise the presumption of a release. But in this case the owner of the servient premises must have done some act inconsistent with, or adverse to the existence of the right. See 2 Evans's Pothier, 136; 10 Mass. R, 183; 3 Campbl. R. 614; 3 Kent, Com. 359; 1 Chit. Pr. 284, 285, 767 to 759, n. (s); 1 Ves. jr. 6, 8; 2 Supp. to Ves. jr. 442; 2 Anstr. 603; S. C. on appeal, 1 Dowl. R. 316; 4 Ad. & Ell 369; 6 Nev. & M. 230. But the dereliction or abandonment of rights affecting lands is not in all cases held to be evidenced by mere non−user.

4. As an exception to the rule may be mentioned rights to mines and minerals, with the incidental privilege of boring and working them. 16 Ves. 390; 19 Ves. 166.

5. In the civil law there is a similar doctrine: on this subject, Vide Dig. 8, 6, 5; Voet, Com. ad Pand. lib. 8, tit. 6, s. 5 et 7; 3 Toull. n. 673; Merl. Repert. mot Servitude, _30, n. 6, and _33; Civ. Code of Louis. art. 815, 816.

6. Every public officer is required to use his office for the public good; a non−user of a public office is therefore a sufficient cause of forfeiture. 2 Bl. Com. 153; 9 Co. 60. Non user, for a great length of time, will have the effect of repealing an old law. But it must be a very strong case which will have that effect. 13 S. & R. 452; 1 Bouv. Inst. n. 94.

NONSENSE, construction. That which in a written agreement or will is unintelligible.

2. It is a rule of law that an instrument shall be so construed that the whole, if possible, shall stand. When a matter is written grammatically right, but it is unintelligible, and the whole makes nonsense, some words cannot be rejected to make sense of the rest; 1 Salk. 324; but when matter is nonsense by being contrary and repugnant to, some precedent sensible latter, such repugnant matter is rejected. Ib.; 15 Vin. Ab. 560; 14 Vin. Ab. 142. The maxim of the civil law on this subject agrees with this rule: Quae in testamento ita sunt scripta, ut intelligi non possent: perinde sunt, ac si scripta non essent. Dig. 50,17,73,3. Vide articles dmbiguity; Construction; Interpretation.

3. In pleading, when matter is nonsense by being contradictory and repugnant to something precedent, the precedent matter, which is sense, shall not be defeated by the repugnancy which follows, but that which is contradictory shall be rejected; as in ejectment where the declaration is of a demise on the second day of January, and that the defendant postea scilicet, on the first of January, ejected him; here the scilicet may be rejected as being expressly contrary to the postea and the precedent matter. 5 East, 255; 1 Salk. 324.

NON SUIT. The name of a judgment given against a plaintiff, when be is unable to prove his case, or when he

refuses or neglects to proceed to the trial of a cause after it has been put at issue, without determining such issue.

2. It is either voluntary or involuntary.

3. A voluntary nonsuit is an abandonment of his cause by a plaintiff, and an agreement that a judgment for costs be entered against him.

4 An involuntary nonsuit takes placs when the 'Plaintiff on being called, when his case is before the court for trial, neglects to appear, or when he has given no evidence upon which a jury could find a verdict. 13 John. R. 334.

5. The courts of the United States; 1 Pet. S. C. R. 469, 476; those of Pennsylvania; 1 S. & R. 360; 2 Binn. R. 234, 248; 4 Binn. R. 84; Massachusetts; 6 Pick. R. 117; Tennessee; 2 Overton, R. 57; 4 Yerg. R. 528; and Virginia; 1 Wash. R. 87, 219 cannot order a nonsuit against a plaintiff who has given evidence of his claim. In Alabama, unless authorized by statute, the court cannot order a nonsuit. Minor, R. 75; 3 Stew. R. 42.

6. In New York; 13 John. R 334; 1 Wend. R. 376; 12 John. R. 299; South Carolina; 2 Bay, R. 126, 445; 2 Bailey, R. 321; 2 McCord, R. 26; and Maine; 2 Greenl. R. 5; 3 Greenl. R. 97; a nonsuit may in general be ordered where the evidence is insufficent to support the action. Vide article Judgment of Nonsuit, and Grah. Pr. 269; 3 Chit. Pr. 910; 1 Sell. Pr. 463; 1 Arch. Pr. 787; Bac. Ab. h. t.; 15 Vin. Ab. 560.

NORTH CAROLINA. The name of one of the original states of the United States of America. The territory which now forms this state was included in the grant made in 1663 by Charles II. to Lord Clarendon and others, of a much more extensive country. The boundaries were enlarged by a new charter granted by the same prince to the same proprietaries, in the year 1665. By this charter the proprietaries were authorized to make laws, with the assent of the freemen of the province or their delegates, and they were invested with various other powers. Being dissatisfied with the form of government, the proprietaries procured the celebrated John Locke to draw a plan of government for the colony, which was adopted and proved to be impracticable; it was highly exceptionable on account of its disregard of the principles of religious toleration and national liberty, which are now universally admitted. After a few years of unsuccessful operation it was abandoned. The colony had been settled at two points, one called the Northern and the other the Southern settlement, which were governed by separate legislatures. In 1729, the proprietaries surrendered their charter, when it became a royal province, and was governed by a commission and a form of government in substance similar to that established in other royal provinces. In 1732, the territory was divided, and the divisions assumed the names of North Carolina and South Carolina.

2. The constitution of, North Carolina was adopted December 18, 1776. To this constitution ammendments were made in convention, June 4, 1835, which were ratified by the people on the 9th day of November of the same year, and took effect on the 1st day of January, 1836.

3. The powers of the government are distributed into three branches, the legislative, the executive, and the judiciary.

4. − _1. The legislative power is vested in a senate and in a house of commons, and both are denominated the general assembly. These will be separately, considered.

5. − 1st. In treating of the senate, it will be proper to take a view of, 1. The qualifications of senators. 2. Of electors of senators. 3. Of the number of senators. 4. Of the time for which they are elected.

6. − 1. The first article, section 3, of the amendments, provides: All freemen of the age of twenty−one years, (except as is hereinafter declared,) who have been inhabitants of any one district within, the state twelve months immediately preceding the day of any election, and possessed of a freehold within the same district of fifty acres of land for six months next before and at the day of election, shall be entitled to vote for a member of the senate; consequently no free negro or free person of mixed blood, descended from negro ancestors to the fourth generation inclusive, can be a senator, as such persons cannot be voters. The 4th article, sec. 2, of the amendments, declares that no person who shall deny the being of God, or the truth of the Christian

religion, or the divine authority of tlie Old or New Testament, or who shall hold religious principles incompatible with the freedom or safety of the state, shall be capable of holding any office or place of trust or profit in the civil department within this state. And the fourth section of the article directs that no person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this state, or any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this state, or be eligible to a seat in either house of the general assembly: Provided, that nothing herein contained shall extend to officers, in the militia or justices of the peace. The 31st section of the constitution provides that no clergyman, or preacher of the gospel, of any denomination, shall be capable of being a member of either the senate, house of commons, or council of state, while he continues in the exercise of his pastoral function. 2. The first article of the amendments, provides, section 3, _2, that all free men of the age of twenty−one years, (except as hereinafter declared,) who have been inhabitants of any one district within the state twelve months immediately preceding the day of any election, and possessed of a freehold within the same district of fifty acres of land, for six months next before and at the day of election, shall be entitled to vote for a member of the senate. And _3, no negro, free, mulatto, or free person of mixed blood, descended from negro ancestors to the fourth generation inclusive, (though one ancestor of each generation may have been a white person,) shall vote for members of the senate or house of commons. 3. The senate consists of fifty representatives. Amendm. art. 1, s. 1. 4. They are chosen biennially by ballot. Id.

7. − 2d. The house of commons will be considered in the same order which has been observed in speaking of the senate. 1. The sixth section of the constitution requires that each member of the house of commons shall have usually resided in the county in which he is chosen for one year immediately preceding his election, and for six months shall have possessed, and continue to possess, in the county which be represents, not less than one hundred acres of land in fee, or for the term of his own life. The disqualifications of persons for membersbip in the house of commons will be found ante, under the bead senate.

2. The qualifications of voters for members of the house of commons are, by sect. 8 of the constitution, that all freemen of the age of twenty−one years, who have been inhabitants of any one county within the state twelve months immediately preceding the day of any election, and shall have paid public taxes, shall be entitled to vote for members of the house of commons, for the county in which be resides. And by _9, that all persons possessed of a freehold, in any town in this state, having a right of representation, and also all freemen, who have been inhabitants of any such town twelve months next before, and at the day of election, and shall have paid public taxes, shall be entitled to vote for a member to represent such town in the house of commons; Provided, always, that this section shall not entitle any inhabitant of such town to vote for members of the house of commons for the county in which he may reside; nor ally freeholder in such county, who resides without or beyond the limits of such town, to vote for a member of the said town. But mulattoes, or persons of a mixed blood, are not voters. Amendm. art. 1, sect. 3, _3.

3. The Amendments, article 1, section 1, __2, 3, and 4, direct bow the house of commons shall be composed, as follows: The house of commons shall be composed of one hundred and twenty representatives, biennially chosen by ballot, to be elected by counties according to their federal population; that is, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term, of years, and excluding Indians not taxed, three−fifths of all other, persons; and each county shall have at least one member in the house of commons, although it may not contain the requisite ratio of population. This apportionment shall be made by the general assembly, at the respective times and periods when the districts for the senate are hereinbefore directed to be laid off; aud the said apportionment shall be made according to an enumeration to be ordered by the general assembly, or according to the census which may be taken by order of congress, next preceding the miking such apportionment. In making the apportionment in the house of commons, the ratio of representation shall be ascertained by dividing the amount of federal population in the state, after deducting that comprehended within those counties which do not severally contain the one hundred and twentieth part of the entire federal population aforesaid, by the number of representatives less than the number assigned to the said counties. To each county containing the said ratio, and not twice the said ratio, there shall be assigned one representative; ’to each county containing twice, but not three times the said ratio, there shall be assigned two representatives, and so on progressively; and then the remaining representatives shall be assigned severally to the counties having the largest fractions. 4. They are elected biennially.

8. − _2. The executive power is regulated by the amendments of the constitution, article 2, as follows, namely:

_1. The governor shall be chosen by the qualified voters for the members of the house of commons, at such time and places as members of the general assembly are elected.

_2. He shall hold Iiis office for the term of two years from the time of bis installation, and until another shall be elected and qualified; but he shall not be eligible more than four years in any term of six years.

_3. The returns of every election for governor shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the speaker of the senate, who shall open and publish them in the presence of a majority of the members of both houses of the general assembly. The person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by joint vote of both houses of the general assembly.

_4. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law., SS 5. The governor elect shall enter on the duties of the office on the first day of January next after his election, having previously taken the oath of office in the presence of the members of both branches of the general assembly, or before the chief justice of the supreme court, who, in case the governor elect should be prevented from attendance before the general assembly, by sickness or other unavoidable cause, is authorized to administer the same.

9. − _3. Tbejudicial powers are vested in supreme courts of law and equity, courts of admiralty, and justices of the peace.

NOSOCOMI, civil law. Persons who have the management and care of hospitals for paupers. Clef Lois Rom. mot Administrateurs.

NOT FOUND. These words are endorsed ou a bill of indictment by a grand jury,.when they have not sufficient evidence to find a true bill; the same as Ignoramus. (q. v.)

NOT GUILTY, pleading. The general issue in several sorts of actions. It is the general issue.

2. In trespass, its form is as follows: "And the said C D, by E F, his attorney, comes and defends the, force and injury, when, &c., and says, that he is not guilty of the said trespasses above laid to his charge, or any part thereof, in the mannor and form as the said A B hath above complained. And of this the said C D puts himself upon the country."

3. Under this issue the defendant may give in evidence any matter which directly controverts the truth of any allegation, which the plaintiff on such general issue will be bound to prove; 1 B. & P. 213; and no person is bound to justify who is not, prima facie, a trespasser. 2 B. & P. 359: 2 Saund. 284, d. For example, the plea of not guilty is proper in trespass to persons, if the defendant have committed no assault, battery, or imprisonment, &c.; and in trespass to personal property, if the plaintiff had no property in the goods, or the defendant were not guilty of taking them, &c.; and in trespass to real property, this plea not only puts in issue the fact of trespass, &c , but also the title, which, whether freehold or possessory in the defendant, or a person under whom he claims, may be given in evidence under it, which matters show, prima facie, that the right of possession, which is necessary in trespass, is not in the plaintiff, but in the defendant or the person under whom he justifies. 8 T. R. 403; 7 T. R. 354; Willes, 222; Steph. PI. 178; 1 Chit. PI. 491, 492.

4. In trespass on the case in general, the formula is as follows: " And the said C D, by E F his attorney, comes and defends the wrong and injury when, &c., and says, that he is not guilty of the premises above laid to his charge, in manner and form as the said A B hath above complained. And of this the said C D puts himself on the country."

5. This, it will be observed, is a mere traverse, or denial, of the facts alleged in the declaration; and therefore, on principle, should be applied only to cases in which the defence rest's on such denial. But here a relaxation has taken place, for under this plea, a defendant is permitted not only to contest the truth of the declaration, but with some exceptions, to prove any matter of defence, that tends to show that the plaintiff has no cause of action, though such matters be in confession and avoidance of the declaration; as, for example, a release given, or satisfaction made. Steph. Pl. 182−3; 1 Chit. Pi. 486.

6. In trover. It is not usual in this action to plead any other plea, except the statute of limitations; and a release, and the bankruptcy of the plaintiff, may be given in evidence under the general issue. 7 T. R. 391

7. In debt on a judgment suggesting a devastavit, an executor may plead not guilty. 1 T. R. 462.

8. In criminal cases, when the defendant wishes to put himself on his trial, he pleads not guilty.

NOT POSSESSED. A plea sometimes used in actions of trover, when the defendant was not possessed of the goods at the commencement of the action. 3 Mann. & Gr. 101, 103.

NOTARY or NOTARY PUBLIC. An officer appointed by the executive, or other appointing power, under the laws of different states.

2. Their duties are generally prescribed by such laws. The most usual of which are, l. To attest deeds, agreements and other instruments, in order to give them authenticity. 2. To protest notes, bills of exchange, and the like. 3. To certify copies of agreements and other instruments.

3. By act of congress, Sept. 16, 1850, Minot's Statutes at Large. U. S. 458, it is enacted, That, in all cases in which, under the laws of the United States, oaths, or affirmations, or acknowledgments may now be taken or made before any justice or justices of the peace of any state or territory, such oaths, affirmations, or acknowledgments may be hereafter also taken or made by or before any notary public duly appointed in any state or territory, aud, when certified under, the hand and official seal of such notary, shall have the name force and effect as if taken or made by or before such justice or justices of the peace. And all laws and parts of laws for punishing perjury, or subornation of perjury, committed in any such oaths or affirmations, when taken or made before any such justice of the peace, shall apply to any such offence committed in any oaths or affirmations which may be taken under this act before a notary public, or commissioner, as hereinafter named: Provided always, That on any trial for either of these offences, the seal and signature of the notary shall not be deemed sufficient in themselves to establish the official character of such notary, but the same shall be shown by other and proper evidence.

4. Notaries, are of very ancient origin they were well known among the Romans, and exist in every state of Europe, and particularly on the continent.

5. Their acts have long been respected by the custom of merchants and by the courts of all nations. 6 Toull. n. 211, note. Vide, generally, Chit. Bills, Index, h. t.; Chit. Pr. Index,, h. t.; Burn's Eccl. Law, h. t.; Bro. Off. of a Not. passim; 2 Har. & John. 396; 7 Verm. 22; 8 Wheat. 326; 6 S. & R. 484; 1 Mis. R. 434.

NOTE, estates, conv., practice. The fourth part of a fine of lands: it is an abstract of the writ of covenant and concord, and is only a, doequet taken by the chirographer, from which he draws up the indenture. It is sometimes taken in the old books for the concord. Cruise, Dig. tit. 35, c. 2, 51.

NOTE OF HAND, contracts. Another name, less technical, for a promissory note. (q. v.) 2 Bl. Com. 467. Vide Bank note; Promissory note, Reissuable note.

NOTES, practice. Short statements of what transpires on the trial of a cause; they are generally made by the judge and the counsel, for their Own satisfaction.

2. They are not, per se, evidence on another trial, not being in the nature of a deposition. 4 Binn. R. 110. But such notes were admitted in a court of equity as evidence of what had been stated by a witness at the trial of an action at law. 3 Y. & C. 413., And a verdict was amended, in a court of law, from the notes of the judges. 11 Ad. & El. 179; S. C. 39 Eng. C L R. 38; see 5 Whart. 156; 5 Watts & S. 51.

3. Notaries formerly made notes, matrix, by abbreviations, from which they made their records, and engrossed the acts which were passed before them. This original is now called the minutes. The notes of the prothonotaries and clerks of courts are called minutes.

NOTICE. The information given of some act done, or the interpellation by which some act is required to be done. It also signifies, simply, knowledge; as A had notice that B was a slave. 5 How. S. C. Rep. 216; 7 Penn. Law Journ. 119.

2. Notices should always be in writing; they should state, in precise terms, their object, and be signed by the proper person, or his authorized agent, be dated, and addressed to the person to be affected by them.

3. Notices are actual, as when they are directly given to the party to be affected by them; or constructive, as when the party

by any circumstance whatever, is put upon inquiry, which amounts in judgment of law to notice, provided the, inquiry becomes a duty. Vide 2 Pow. Mortg. 561 to .662; 2 Stark. Ev. 987; 1 Phil. Ev. Index, b. t.; 1 Vern. 364, n.; 4 Kent, Com. 172; 16 Vin. Ab. 2; 2 Supp. to Ves. jr. 250; Grah. Pr. Index, h. t.; Chit. PI. Index, h. t.; 2 Mason, 531; 14 Pick. 224; 4 N. H.]Rep. 397; 14 S. & R. 333; Bouv. Inst. In−dex, h. t.

4. With respect to the necessity for giving notice, says Mr. Chitty, 1 Pr. 496, the rules of law are most evidently founded on good sense and so as to accord with the intention of the parties. The giving notice in certain cases obviously is in the nature of a condition precedent to the right to call on the other party for the performance of his engagement, wbether his contract were express or implied. Thus, in the familiar instance of bills of exchange and promis−sory notes, the implied contract of an in−dorser is, that be will pay the bill or note, provided it be not paid, on presentment at maturity, by the acceptor or maker, (being the party primarily liable, and provided that he (the indorser) has due notice of the dishonor, and without which be is discharged from all liability; consequently, it is essen−tial for the holder to be prepared to prove affirmatively that such notice was given, or some facts dispensing with such notice.

5. Whenever the defendant's liability to perform an act depends on another oc−currence, which is best known to the plain−tiff, and of which the defendant is not legally bound to take notice, the plaintiff must prove that due notice, was in fact given. So in cases of insurances on ships, a notice of abandonment. is frequently ne−cessary to enable the assured plaintiff. to proceed as for a total lose when sometbing

remains to be saved, in relation to which, upon notice, the in−surers might themselves take their own measures.

6. To avoid doubt or ambiguity in the terms of the notice, it may be advisable to give it in writing, and to preserve evidence

of its delivery, as in the case of notices of the dishonor of a bill.
7. The form of the notice may be as subscribed, but it must necessarily vary in its terms according to the circumstances of each case. So, in order to entitle a party to insist upon a strict and exact performance of a contract on the fixed day for completing it, and a fortiori to retain a deposit as forfeited, a reasonable notice must be given of the intention to insist on a precise performance, or be will be considered as having waived such strict right. So if a lessee or a purchaser be sued for the recovery of the estate, and he have a remedy over against a third person, upon a covenant for quiet enjoyment, it is expedient (although not absolutely necessary)

referring to such covenant.

NOTICE, AVERMENT OF, in pleading. This is frequently necessary, particularly in special actions of assumpsit.
2. When the matter alleged in the pleading is to be considered as lying more properly in the knowledge of the plaintiff, than of the defendant, then the declaration ought to state that the defendant had notice thereof; as when the defendant promised to give the plaintiff as much for a commodity as another person had given, or should give for the like.
3. But where the matter does not lie more properly in the knowledge of the plaintiff, than of the defendant, notice need not be averred. 1 Saund. 117, n. 2; 2 Saund. 62 a, n. 4; Freeman, R. 285. Therefore, if the defendant contrasted to do a thing, on the performance of an act by a stranger, notice need not be averred, for it lies in the defendant's knowledge as much as the plaintiff's, and he ought to take notice of it at his peril. Com. Dig. Pleader, C 75. See Com. Dig. Id. o 73, 74, 75; Vin. Abr. Notice; Hardr. R. 42; 5 T. R. 621.
4. The omission of an averment of notice, when necessary, will be fatal on demurrer or judgment by default; Cro. Jac. 432; but may be aided by verdict; 1 Str. 214; 1 Saund. 228, a; unless in an action

against the drawer of a bill, when the omis−

sion of the averment of notice of non−pay−ment by the acceptor is fatal, even after verdict. Doug. R. 679.

NOTICE OF DISHONOR. The notice given by the holder of a bill of exchange or pro−

missory note, to a drawer or endorser on the same, that it has been dishonored, either by not being accepted in the case of a bill, or paid in cue of an accepted bill or note.

2. It is proper to consider, 1. The form of the notice; 2. By whom it is to be given; 3. To whom. 4. When; 5. Where; 6. Its effects; 7. When a want of notice will be excused; 8. When it will be waived.

3. − SS1. Although no precise form of words is requisite in giving notice of dis−honor, yet such notice must convey, 1. A true description of the bill or note so as to ascertain its identity; but if the notice cannot mislead the party to whom it is sent, and it conveys the real fact without any. doubt, although there may be a small va−riance, it cannot be material, either to regard his rights or to avoid his responsibility. 11 Wheat. 431, 436; Story on Bills, SS 390; 11 Mees. & Wels. 809. 2. The notice must contain an assertion that ther bill has been duly presented to the drawee for accept−ance, when acceptance has been refused, or to the acceptor of a bill, or maker of a note for payment at its maturity, and dishonored. 4 C. 340; 7 Bing. 530; l Bing. N. C. 192; 1 M. & G. 76; 3 Bing. N. C. 688; 10 A. & E. 125. 3. The notice must state that the holder, or other person giving the notice, looks to the person to whom the no−tice is given, for reimbursement and indem−nity. Story on Bills, SS 301, 390. Although in strictness this may be required, where the language is otherwise doubtful and uncer−tain, yet, in general, it will be presumed where in other respects the notice is suffi−cient. 2 A. & E. N. R. 388, 416; 11 Mees. & Wels. 372; Sto on P. N. SS 353; 11 Wheat. 431, 437; 2 Pet. 543; 2 John. Cas. 237; 2 Hill, (N. Y.) R. 588; 1 Spear, R. 244.

4.−SS 2. In general the notice may be

given by the holder or some one authorized by him; Story on Bills, SS 303, 304; or by some one who is a party and liable to pay the bill or note. But notice given by a stranger is not sufficient. Chit. on Bills, 368, 8th edit.; 1. T. R. 170; 8 Miss. 704; 16 S. & R. 157, 160. On the death of the holder, his executor or administrator is re−quired to give notice, and, if none be then Appointed, the notice must be given within

a reasonable time after one may be ap−pointed. Story on P. N. SS 3Q4. When the bill or note i's held by partners, notice by any of them is sufficient; and when joint−holders have the paper, and one dies, the notice may be given by the survivor; the assignee of the holder who is a bankrupt, must give notice, but if no assignee be ap−pointed when the paper becomes due, the notice must be given without delay after his appointment; but it seems the bankrupt holder may himself give the notice. Story on P. N. SS 305. If −an infant be the holder the notice may be given by him, or if he has a guardian, by the latter. .

5.−SS 3. The holder is required to give notice to all the parties to whom he means to resort for payment, and, unless excused in point of law, as will be stated below, such parties will be exonerated, and ab−solved from all liability on such bill or note. Story on P. N. SS 307. But a party who purchases a bill, and, without endorsing it, transmits it on account of goods ordered by him, is not entitled to notice of its dis−honor. 1 Wend. 219; 4 Wash. C. C. 1.

In cases of partnership, notice to either of the partners is sufficient. Story on Bills, SS 299; Story on P. N. SS 308; 20 John. 176; 2 How. Sup. Ct. It. 457. Notice should be given to each of several joint endorsers, who are not partners. 1 Conn. 368; 4 Cowen, 126; 6 Hill, (N. Y.) R. 282; Story on Bills, SS 299. Notice to an absent endorser may be given to bis gene−ral agent. 1 M. & Selw. 545; 16 Martin, (Lo.) R. 87. See 12 Wheat. 599; 4 Wash. C. C. 464; 3 Wend. 276.

6. − SS 4. The notice of dishonor must be

given to the parties to whom the holder means to resort, within a reasonable time after the dishonor of the bill, when it is dis−honored for non−acceptance, and he must not delay giving notice until the bill has been protested for non−payment. Bull. N. P. 271; 12 East, 434; 1 Harr. & J. 187; 1 Dall. 235; 2 Dall. 219, 233; 1 Yeates, 147; 3 Wash. C. C. 396; 1 Bay, 177; 11 John. 187; 10 Wend. 304; 13 Wend. 133; 5 Halst. 139; 4 J. J. Marsh. 61; Paine, 156; 2 Hayw. 332; 2 Marsh. 616. Though formerly it was doubtful whether the court or jury were to judge as to the reasonable−ness of the notice in respect to time; 1 T. R. 168; yet, it −seems now to be settled, that when the facts are ascertained, it is a question for the court and ’not for the jury. 10 Mass. 84, 86; 6 Watts & S. 399; 3

Marsh. 262; 2 Harris R. 488;−Penn. 916; 1 N. H. Rep. 140; 17 Mass. 449, 453; 2 Aik. 9; Rice, R. 240; 2 Hayw. 45.

7.−SS 5. In considering as to where the 'notice should be given, a difference is made between cases, where the parties reside in the same town, and where they do not. 1. When both parties reside in the same town or city, the notice should either be personal or at the domicil or place of business of the party notified, so that it may reach him on the very day he is entitled to notice. 1 M. & S. 545, 554; 2 Pet. 100; 1 Pet. 578, 583; Story on Bills, SSSS 284−290; 1 Rob. Lo. R. 572; 3 Rob. Lo. 261; 20 John. 372; 1 Conn. 329; 17 Mart.,Lo. 137, 158, 359; 19 Mart. Lo. 492; Story on P. N. 322. But see 28 Pick. 305; 6 Watts & Serg. 262; 2 Aik. 263; 8 Ohio, 507, 510; Rice, R. 240, 243; 1 Litt. R. 194. If the notice be put in the post office, the holder must prove it reached the endorser. 2 Pet. 121. But in those towns where they have letter carriers, who carry letters from the post office and deliver them at the houses or places of business of the parties, if the notice be put in the post office in time to be delivered on the same day, it will be sufficient. Chit. on Bills, 504, 508, 513, 8th edit.; 1 Pet. 578; 11 John. 231. 2. When the parties reside in different towns or cities, the notice may be sent by the post, or a special messenger, or a private person, or by any other suitable or ordinary con− veyance. Chit. on Bills, 518, 8th ed.; Story on P. N. SS 324; Bayl. on Bills, eh. 7, SS 2; 1 Pet. 582. When the post is re, sorted to, the holder has the whole day on which the bill becomes due to prepare his notice, and if it be put in the post office on the next day in time to go by either mails, when there is more than one, it will in general be sufficient. 17 Mass. 449, 454; 1 Hill, (N. Y.) R. 263; but see contra, 2− Rob. Lo. R. 117.

8. − SS6. The effect of the notice of dis− honor, when properly given, and when it is followed by a protest, when a protest is requisite, will render the drawer and en− dorsers of a bill or the endorsers of a note liable to the holder. But the drawer and endorsers may tender the money at any

time before a writ has been issued; though the acceptor must pay the bill on present−ment, and cannot plead a subsequent ten−der. 1 Marsh. 36; 5 Taunt. 240; S. C. 8 East, 168.
9. − SS 7. The same reasons which will

excuse the want of a presentment, will in general excuse a want of protest. See Pre−sentment, contracts, n. 8, 9.
10.−SS 8. A want of notice may be waived by the party to be affected, after a full knowledge of the facts that the holder has no just cause for the neglect or omission. Story on P. N. SS 858. See Presentment, contracts, n. 9.
NOTICE, TO PRODUCE PAPERS, practice, evidence. When it is intended to give seoondary evidence of a written instrument or paper, which is in: the possession of the opposite party, it ii, in general, requisite to give him notice to produce the same on the trial of the cause, before such secondary evidence can be admitted.
2. To this general rule there are some exceptions: 1st. In cases where, from the nature of the proceedings, the party in pos−session of the instrument has notice that he is charged with the possession of it, as in the case of trover for a bond. 14 East, R. 274; 4 Taunt. R. 865; 6 S. & R. 154; 4 Wend. 626; 1 Camp. 143. 2d. When the party in possession Las obtained the instru−ment by fraud. 4 Esp. R. 256. Vide 1 Phil. Ev. 425; 1 Stark. Ev. 862; Rosc. Civ. Ev. 4.
3. It will be proper to consider the form of the notice; to whom it should be given; when it must be served; and its effects.
4.−1. In general, a notice to produce papers ought to be given in writing, and state the title of the cause in which it is proposed to use the papers or instruments required. 2 Stark. R. 19; S. C. 3 E. C. L. R. 222. It seems, however, that the notice may be by parol. 1 Campb. R. 440. It must describe with sufficient certainty the papers or instruments called! for, and must not be too general, and by that means be

uncertain. R. & M. 341; McCl. & Y. 139.

5.−2. The notice may be given to the party himself, or to his attorney. 3 T. R. 806; 2 T. It. 203, n.; R. & M. 827; 1 M. & M. 96.

6.−3. The notice must be served a reasonable time before trial, so as to afford an opportunity to the party to search for and produce the intrument or paper in question. 1 Stark. R. 283; S. C. 2 E. C. L. R. 391; R. & M. 47, 827; 1 M. & M. 96, 335, n.

7.−4. When a notice to produce an instrument or paper in the cause has been

proved, and it is also proved that such paper or instrument was, at the time of the notice, in the hands of the party or his privy, and, upon request in court, he re−fuses or neglects to produce it, the party having given such notice, and made such proof, will he entitled to give secondary evidence of such paper or instrument thus withheld.

8. The 15th section of the, judiciary act of the United States provides, " that all the courts of the United: States shall have power, in the trial of actions at law, on motion, and due notice there of being given,

to require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery; and if a plaintiff shall fail to comply with such order to produce books or writings, it shall be lawful for the courts, respectively, on motion, to give the like judgment for the defendant, as in cases of nonsuit; and if the defendant fail to comply with such order to produce books or writings, it shall be lawful for the courts, respectively, on mo−tion as aforesaid, to give judgment against him or her by default."

9. The proper course to pursue under this act, is to move the court for an order on the opposite party to produce such books or papers. See, as to the rules in courts of equity to compel the production of books and papers, 1 Baldw. Rep. 388, 9; 1 Vern. 408, 425; 1 Sch. & Lef. 222; 1 P. Wins. 731, 732; 2 P. Wms. 749; 3 Atk. 360. See Evidence, secondary.

NOTICE TO QUIT. A request from a landlord to his tenant, to quit the premises lessed, and to give possession of the same to him, the landlord, at a time therein men−tioned.

2. It will be proper to consider, 1. The form of the notice. 2. By whom it is to be given. 3. To whom. 4. The mode of serving it. 5. At what time it must be served. 6. What will amount to a waiver of it.

3.−SS 1. The form of the notice. The

notice or demand of possession should con−
tain a request from the landlord to the
tenant or person in possession to, quit the
premises which he holds from the landlord,
(which premises ought to be particularly
described, as being situate in the street an
city or place, or township and county,) and

to deliver them to him on or before a day
certain, generally, when the lease is for a
year, the same day of the year on which the
lease commences. But where there is some
doubt as to the time when the lease is to
expire, it is proper to add, " or at the ex−
piration of the current year of your tenancy."
2 Esp. N. P. C. 589. It should be dated,
signed by the landlord himself, or by some
person in his name, who has been authorized
him, and directed to the tenant. The
notice must include all the premises under
the same demise;, for the landlord cannot
determine the tenancy as to part of the pre−
mises demised and continue it as to the
residue. For the purpose of bringing an
ejectment, it is not necessary that the notice
should be in writing, except when required
to be so under an express agreement be−
tween the parties. Com. Dig. Estate by
Grant, G 11, n. p. But it is the general
and safest practice to give written notices,
and it is a precaution which should always,
when possible, be observed, as it prevents
mistakes, and renders the evidence certain
and correct. Care should be taken that the
words of a notice be clear and decisive, with−
loat ambiguity, or giving an alternative to the
tenant, for if it be really ambiguous or op−
tional, it will be invalid. Adams on Ej. 122.

4. −SS 2. As to the person by whom the
notice is to be given. It must be given by
the person interested in the premises, or his
agent properly appointed. Adams on Ej.
120. As the tenant is to act upon the
notice at the time it is given to him , it is
necessary that it should be such as he may
act upon with security, and should, there−
fore, be binding upon all the parties con−
cerned at the time it is given. Where,
therefore, several persons are jointly inte−

rested in the premises, they all must join in the notice, and if any of them be not a party at the time no subsequent ratification by him will be sufficient by relation to render the notice valid. 5 East, 491; 2 Phil. Ev. 184. But if the notice be given by an agent, it is sufficient if his authority is afterwards recognized. 3 B. & A. 689.

5.−SS 3. As to the person to whom the notice should be given. When the relation of landlord and tenant subsists, difficulties can seldom occur as to the party upon whom the notice should be served. It should invariably be given to the tenant, of the party serving the notice, notwithstanding a part may have been underlet, or the whole of the premises may have been assigned;

Adams on Ej. 119; 2 New Rep. 330, and vide 14 East, 234; unless, perhaps, the lessor has recognized the slb−tenant as his tenant. l0 Johns. 270. When the premises are in possession of two or more as joint−tenants or tenants in common, the notice should be to all; a notice addressed to all, and served upon one only, will, however, be a good notice. Adams on Ej. 123.

6. − SS 4. As to the mode of, serving the notice. The person about serving the notice should make two copies of it, both signed by the proper person, then procure one or more respectable persons for witnesses, to whom he should show the copies, who, upon comparing them, and finding them alike, are to go with the person who is to serve the notice. The person serving the notice then in their presence, should deliver one of these copies to the tenant personally, or to one of his family, at his usual place of abode, although the same be not upon the demised premises; 2 Phil, Ev. 185; or serve it upon the person in possession; and where the tenant is not in possession, a copy may be served on him if he can be found, and another on the person in possession. The witnesses should then, for the sake of security, sign their names on the back of the copy of the notice retained, or otherwise mark it so as to identify it, and they should also state the manner in which the notice was served. In the case of a joint demise to two defendants, of whom one alone resided upon this premises, proof of the service of the notice upon him has been held to be sufficient ground for the jury to presume that the notice so served upon the premises, has reached the other who resided in another place. 7 East, 553; 5 Esp. N. P. C. 196,

7.−SS 5. At what time it must be served. It must be given three months before the expiration of the lease. Difficulties sometimes arise as to the period of the commencement of the tenancy, and when a regular notice to quit on any particular day is given, and the time when the term began is unknown, the effect of such notice as to its being evidence or not of the commencement of the tenancy, will depend upon the particular circumstances of its delivery; if the

tenant having been applied to by bis land−
lord respecting the time of the commence−
ment of the tenancy, has informed him, it
began on a certain clay, and in consequence
of such information, a notice to quit on that
day is given at a subsequent period, the

tenant is concluded by his act, and will not
be permitted to prove that in point of fact,
the tenancy has a different commencement;
nor is it material whether the information
be the result of design or ignorance, as the
landlord is in both instances equally led into
error. Adams on Ej. 130; 2 Esp. N. P.
C. 635; 2 Phil. Ev. 186. In like manner
if the tenant at the time of delivery of the
notice, assent to the terms of it, it will waive
any irregularity u to the period of its ex−
piration, but such assent must be strictly
proved. 4 T. R. 361; 2 Phil. Ev. 183.
When the landlord is ignorant of the time
when the term commenced, a notice to quit
may be given not specifying any particular
day, but ordering the tenant in general
terms to quit and deliver up the possession
of the premises, at the end of the current
year of his tenancy thereof, which shall, ex−
pire next after the end of three months from
the date of the notice. See 2 Esp. N. P.
C. 589.
8.−SS 6. What will amount to a waiver
of the notice. The acceptance of rent ac−
cruing subsequently to the expiration of the
notice is the most usual means by which a
waiver of it may be produced, but the ac−
ceptance of such rent is open to explanation;
and it is the province of the jury to decide
with what views, and under what circum−
stances the rent is paid and received.
Adapms on Ej. 139. If the money be taken
with an express declaration that the notice
is not thereby intended to be waived, or
accompanied by other circumstances which
may induce, an opinion that the landlord did
not intend to continue the tenancy, no
waiver will be produced by the acceptance;
the rent must be paid and received as rent,
or the notice will remain in force. Cowp.
243. The notice may also be waived by
other acts of the landlord; but they are

generally open to explanation, and the particular act will or will not be a waiver of the notice, according to the circumstances which attend it. 2 East, 236; 10 East, 13; 1 T. R. 53. It has been held that a notice to quit at the end of a certain year is not waived by the landlord's permitting the tenant to remain in possession an entire year after the expiration of the notice, notwithstanding the tenant held by an improving lease, that is, to clear and fence the land and pay the taxes. 1 Binn. 333. In cases, however, where the act of the landlord cannot be qualified, but must of necessity be taken as a confirmation of the ten−

ancy, as if he distrain for rent accruing after the expiration of the notice, or recover in an action for use and occupation, the notice of course will be waived. Adam on Ej. 144; 1 H. BI. 311.

NOTING. The name of the minute made by a notary on a bill of exohange, after it has been presented for acceptance or payment, consisting of the initials of his name, the date of the day, month ana year when such presentment was made, and the reason, if any has been assigned, for non−acceptance or non−payment, together with his charge. The noting is not indispensa−ble, it being only a part of the protest; it will not supply the protest. 4 T. R. 175 Chit. on Bills, 280, 398. See Protest.

NOTORIETY, evidence. That which is generally known.

2, This notoriety is of fact or of law. In general, the notoriety of a fact is not suffi−cient to found a judgment or to rely on its truth; 1 Ohio Rep. 207; but there are some facts of which, in consequence of their notoriety, the court will, suo motu, take cognizance; for example, facts stated in ancient histories; Skin. 14; 1 Ventr. R. 149; 2 East, Rep. 464; 9 Ves. jr. 347; 10 Ves.jr. 854; 8 John. Rep. 385; 1 Binn. R. 399; recitals in statutes; Co. Lit. 19 b; 4 M. & S. 542; and in the law text books; 4 Inst. 240; 2 Rags. 313; and the journals of the legislatures, are considered of such notoriety that they need not be otherwise proved.

3. The courts of the United States take judicial notice of the, ports and waters of the United States, in, which the tide ebbs and flows. 3 Dall. 297; 9 Wheat. 374; 10 Wheat. 428; 7 Pet. 342. They take like notice of the boundaries, of the several states and judicial districts. It would be altogether unnecesrary, if not absurd, to prove the fact that London in Great Britain or Paris in France, is not within the juris−diction of an American court, because the fact is notoriously known.

4. It is difficult to say what will amount to such notoriety as to render any other proof unnecessary. This must depend upon many circumstances; in one case, perhaps upon the progress of human knowledge in

the fields of science; in another, on the extent of information on the state of foreign countries, and in all such instances upon the accident of their being little known or publicly communicated. The notoriety of the law is such that the judges are always bound to take notice of it; statutes, precedents and text books are therefore evidence, without any other proof than, their production. Gresley, Ev. 293. The courts of the United States take judicial notice of all laws and jurisprudence of the several states in which they exercise original or appellate jurisdiction. 9 Pet. 607, 624.
5. The doctrine of the civil and canon laws is similar to this. Boehmer in tit. 10, de probat. lib. 2, t. 19, n. 2; Mascardus, de probat conclus. 1106, 1107, et seq.; Menock. de praesumpt. lib. 1, quaest. 63, &c.; Toullier Dr. Civ. Frau. liv. 3, c. 6, n. 13; Diet. de Jurisp. mot Notoriete; 1 Th. Co. Lit. 26, n. 16; 2 Id. 63, n. A; Id. 334, n. 6; Id. 513, n. T 3; 9 Dana, 23 12 Verm. 178; 5 Port. 382; 1 Chit. PI. 216, 225.

NOVA CUSTOMA. The name of an imposition or duty in England. Vide Antiqua; Customs.

NOVA STATUTA. New statutes. The name given to the statutes commencing with the reign of Edward III. Vide Vetera Statuta.

NOVAE NARRATIONES. The title of an ancient English book, written during the reign of Edward III. It consists of declarations and some other pleadings.

NOVATION, civil law. 1. Novation is a substitution of a new for an old debt. The old debt is extinguished by the new one contracted in its stead; a novation may be made in three different ways, which form three distinct kinds of novations.
2. , The first takes place, without the intervention of any new person, where a debtor contracts a new engagement with his creditor, in consideration of being liberated from the former. This kind has no appropriate name, and is called a novation generally.
3. The second is that which takes place

by the intervention of a new debtor, where another person becomes a debtor instead of a former debtor, and is accepted by the creditor, who thereupon discharges the first debtor. The person thus rendering himself debtor for another, who is in consequence discharged, is called expromissor; and this kind of novation is caned expromissio.
4. The third kind of novation takes place by the intervention of a new creditor where a debtor, for the purpose of being discharged from his original creditor, by order of that creditor, contracts some obligation in favor of a new creditor. There is also a particu−lar kind of novation called a delegation.

Poth. Obl. pt. 3, c. 2, art. 1. See Delegation.

5.−2. It is a settled principle of the common law, that a mere agreement to substitute any other thing in lieu of the original obligation is void, unless actually carried into execution and accepted as satisfaction. No action can be maintained upon the new agreement, nor can the agreement be pleaded as a bar to the original demand. See Accord. But where an agreement is entered into by deed, that deed gives, in itself, a substantive cause of action, and the giving such deed may be sufficient accord and satisfaction for a simple contract debt. 1 Burr. 9; Co. Litt. 212, b.

6. The general rule seems to be that if one indebted to another by simple contract, give his creditor a promissory note, drawn by himself, for the same sum, without any new consideration, the new note shall not be deemed a satisfaction of the original debt, unless so intended and accepted by the creditor. 15 Serg. & Rawle, 162; 1 Hill's N. Y. R. 516; 2 Wash. C. C. Rep. 191; 1 Wash. C. C. R. 156, 321; 2 John. Cas. 438; Pet. C. C. Rep. 266; 2 Wash. C. C. R. 24, 512; 3 Wash. C. C. R. 396: Addis. 39; 5 Day, 511; 15 John. 224; 1 Cowen, 711; see 8 Greenl. 298; 2 Greenl. 121; 4 Mason, 343; 9 Watts, 273; 10 Pet. 532; 6 Watts & Serg. 165, 168. But if he transfer the note he cannot sue on the original contract as long as the note is out of his possession. 1 Peters' R. 267. See generally Discharge; 4 Mass.. Rep. 93; 6 Mass. R. 371; 1 Pick. R. 415; 5 Mass. R. 11; 13 Mass. R. 148; 2 N. H. Rep. 525; 9 Mass. 247; 8 Pick. 522; 8 Cowen, 390; Coop. Just. 582; Gow. on Partn. 185; 7 Vin. Abr. 367; Louis. Code, art. 2181 to 2194; Watts & S. 276; 9 Watts, 280; 10 S. R. 807; 4 Watts, 378; 1 Watts & Serg. 94; Toull. h. t.; Domat, h. t.; Dalloz. Dict. h. t.; Merl. Rep. h. t.; Clef des Lois Romaines, h. t.; Azo & Man. Inst. t. 11, c. 2, SS 4; Burge on Sur. B. 2, c. 5, p. 166.

NOVEL ASSIGNMENT. Vide New Assignment.

NOVEL DISSEISIN. The name of an old remedy which was given for a new or recent disseisin.

2. When tenant in fee simple, fee tail, or for term of life, was put out, and dig− seised of his lands or tenements, rents, find the like; he might sue out a writ of assise or novel disseisin; and if, upon trial, he could prove his title, and his actual seisin,

and the disseisin by the present tenant, be was entitled to have judgment to recover his seisin and damages for the injury sustained. 3 Bl. Com. 187. This remedy is obsolete.

NOVELLAE LEONIS. The ordinances of the emperor Leo, which were made from the year 887 till the year 893, are so called. These novels changed many rules of the Justinian law. This collection contains one hundred and thirteen novels, written origi− nally in Greek, and afterwards, in 1560, translated into Latin, by Agilaeus. − .

NOVELS, civil law. The name given to some constitutions or laws of some of the Roman emperors; this name was so given because they were new or posterior to the laws which they had before published. The novels were made to supply what bad not been foreseen in the preceding laws, or to amend or alter the laws in force.

2. Although the novels of Justinian are the best known, and when the word novels only is mentioned, those of Justinian are always intended, he was not the first who gave the name of novels to his constitution and laws. Some of the acts of Theodosius, Valentinien, Leo, Severus, Anthemius, and others, were, also called novels. But the novels of the emperors who preceded Jus− tinian bad not the force of law, after the enactment of the law by order of that emperor. Those novels are not, however, entirely useless, because the code of Jus− tinian having been composed mainly from the Theodosian code and the novels, the latter frequently remove doubts which arise on the construction of the code. The novels of, Justinian form the fourth part of the Corpus Juris Civilis. They are directed either to some, officer, or an archbisbop or bishop, or to some private individual of Constantinople but they all had the force and authority of law. The number of the

novels is uncertain. The 118th novel is the foundation and groundwork of the English statute of distribution of intestate's effects, which has been copied into many states of the Union. Vide 1 P. Wms. 27; Pr. in Chan. 593

NOVUS HOMO. A new man; −this term, is applied to a man who has been pardoned of a crime, by which he is restored to society, and is rebabilitated.

NOXAL ACTTON, civil law. A per− sonal, arbitrary, and indirect action in favor of one who has been injured by the slave of another, by which the owner or master of the slave was compelled either to pay the

damages or abandon the slave. Vide Abandonment for torts, and Inst. 4, 8; Dig. 9, 4; Code, 3, 41.

NUBILIS, civil law. One who is of a proper age to be married. Dig. 32,51.

NUDE. Naked. Figuratively, this word is applied to various subjects.

2. A nude contract, nudum pactum, q. v.) is one without a consideration; nu de matter, is a bare allegation of a thing done, without any evidence of it.

NUDE MATTER. A bare allegation un− supported by evidence.

NUDUM PACTUM, contracts. A con− tract made without a consideration,; it is called a nude or naked contract, because it is not clothed with the consideration re− quired by law, in order to give an action. 3 McLean, 330; 2 Denio, 403; 6 Iredell, 480; 1 Strobh. 329; 1 Kelly, 294; 1 Dougl. Mich. R. 188.

2. There are some contracts which, in consequence of their forms, import a con− sideration, as sealed instruments, and bills of exchange, and promissory notes, which are generally good although no consideration appears.

3. A nudum pactum may be avoided, and is not binding.

4. Whether the agreement be verbal or in writing, it is still a nude pact. This has been decided in England, 7 T. R. 350, note; 7 Bro. P. C. 550; and in this country; 4 John. R. 235; 5 Mass. R. 301, 392; 2 Day's R. 22. But if the contract be under seal, it is valid. 2 B. & A. 551. It is a rule that no action can be maintained on a naked contract; ex nudopacto non oritur actio: 2 Bl. Com. 445; 16 Vin. Ab. 16.

5. This term is borrowed from the civil law, and the rule which decides upon the nullity of its effects, yet the common law has not; in any degree been influenced by the notions of the civil law, in defining what constitutes a nudum pactum. Dig. 19, 5, 5. See on this subject a learned note in Fonbl. Eq. 335, and 2 Kent, Com. 364. Toullier defines nudum pactum to be an agreement not executed by one of the parties, tom. 6, n. 13, page 10. Vide 16 Vin. Ab. 16; 1 Supp. to Ves. jr. 514; 3 Kent, Com. 364; 1 it. Pr. 113; 8 Ala. 131; and art.

Consideration.

NUISANCE, crim. law, torts. This word means literally annoyance; in law, it signifies, according to Blackstone, " anything that worketh hurt, inconvenience, or damage." 3 Comm. 216.

2. Nuisances are either public or common, or private nuisances.

3.−1. A public or common nuisance is such an inconvenience or troublesome offence, as annoys the whole community in general, and not merely some particular person. 1 Hawk. P. C. 197; 4 Bl. Com. 166−7. To constitute a Public nuisance, there must be such ’a number of persons annoyed, that the offence can no longer be considered a private nuisance: this is a fact, generally, to be judged of by the jury. 1 .Burr. 337; 4 Esp. C. 200; 1 Str. 686, 704; 2 Chit. Cr. Law, 607, n. It is difficult to define what degree of annoyance is necessary to constitute a nuisance. In relation to offensive trades, it seems that when such a trade renders the enjoyment of life and property uncomfortable, it is a nuisance; 1 Burr. 333; 4 Rog. Rec. 87; 5 Esp. C. 217; for the neighborhood have a right to pure and fresh air. 2 Car. & P. 485; S. C. 12 E. C. L. R. 226; 6 Rogers’ Rec. 61.

4. A thing may be a nuisance in one place, which−is not so in another; therefore the situation or locality of the nuisance must be considered. A tallow chandler seeing up his baseness among other tallow chandlers, and increasing the noxious smells of the neighborhood, is not guilty of setting up a nuisance, unless the annoyance is much increased by the new manufactory. Peake’s Cas. 91. Such an establishment might be a nuisance−in a thickly populated town of merchants and mechanics, where Do such business was carried on.

5. Public nuisances arise in consequence of following particular trades, by which the air−is rendered offensive and noxious. Cro. Car. 510; Hawk. B. 1, c. 755 s. 10; 2 Ld. Raym. 1163; 1 Burr. 333; 1 Str. 686. From−acts of public indecency; as bathing in a public river, in sight of the neighbor−

ing houses; 1 Russ. Cr. 302; 2 Campb. R. 89; Sid. 168; or for acts tending to a breach of the public peace, as for drawing a number of persons into a field for the purpose of pigeon−shooting, to the disturbance of the neighborhood; 3 B. & A. 184; S. C. 23 Eng. C. L. R. 52; or keeping a disorderly house; 1 Russ. Cr. 298; or a gaming house; 1 Russ. Cr. 299; Hawk . b. 1, c. 7 5, s. 6; or a bawdy house; Hawk. b. 1, c. 74, s. 1; Bac. Ab. Nuisance, A; 9 Conn. R. 350; or a dangerous animal, known to be such, and suffering him to go at large, as a large bull−dog accustomed to bite people; 4 Burn’s, Just. 678; or exposing a person

having a contagious disease, as the small−pox, in public; 4 M. & S. 73, 272; and the like.
6.−2. A private nuisance is anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another. 3 Bl. Com. 1215; Finch, L. 188.
7. These are such as are injurious to corporeal inheritance's; as, for example, if a man should build his house so as to throw the rain water which fell on it, on my land; F. N. B. 184; or erect his. building, without right, so as to obstruct my ancient lights; 9 Co. 58; keep hogs or other animals so as to incommode his neighor and render the air unwholesome. 9 Co. 58.
8. Private nuisances may also be injurious to incorporeal hereditaments. If, for example, I have a way annexed to my estate, across another man's land, and he obstruct me in the use of it, by plowing it up, or laying logs across it, and the like. F. N. B. 183; 2 Roll. Ab. 140.
9. The remedies for a public nuisance are by indicting the party. Vide, generally, Com. Dig. Action on the case for a nuisance; Bac. Ab. h. t.; Vin. Ab. h. t.; Nels. Ab. h. t.; Selw. N. P. h. t.; 3 Bl. Com. c. 13 Russ. Cr. b. 2, c. 30; 1 0 Mass. R. 72 7 Pick. R. 76; 1 Root's Rep. 129; 1 John. R. 78; 1 S. & R. 219; 3 Yeates' R. 447; 3 Amer. Jurist, 85; 3 Harr. & McH. 441; Rose. Cr. Ev. h. t.; Chit. Cr. L. Index, b. t.; Chit. Pr. Index, b. t., and vol. 1, p. 383; Bouv. Inst. Index, h. t.

NUL, law French. A barbarous word which means to convey a negative; as, Nul tiel record, Nul tiel award.

NUL AGARD. No award. A plea to an action on an arbitration bond, when the defendant avers that there was no legal award made. 3 Burr. 1730; 2 Stra. 923.

NUL DISSEISIN, pleading. No disseisin. A plea in a real action, by which the defendant denies that there was any disseisin it is a species of the general issue.

NUL TIEL RECORD, pleading. No such record
2. When a party claims to recover on the evidence of a record, as in an action on scire facias, or when he sets up his defence on matter of record, as a former acquittal

or former recovery, the opposite party may plead or, reply nul tiel record, there is no such record; in which case the issue thus raised is called an issue of nul tiel record, and it is tried by the court by the inspec− tion, of the record. Vide 1 Saund. 92, n. 3

12Vin. Ab.188; 1 Phil. Ev. 307,8; Com. Dig. Bail, R. 8 − Certiorari, A l Pleader, 2 W 13, 38 − Record, C; 2 McLean, 511; 7 Port. 110; 1 Spencer, 114.

NUL TORT, pleading No wrong.

2. This is a plea to a real action, by which the defendant denies that he com− mitted any wrong. It is a species of gene− ral issue.

NUL WASTE, pleading. This is the gene− ral issue in an action of waste. Co. Entr. 700 a, 708 a. The plea of, nul waste ad− mits nothing, but puts the whole declaration in issue; and in support of this plea the defendant may give in evidence anything which proves that the act charged is no waste, as that it happened by tempest, light− ning, and the like. Co. Litt. 283 a; 3 Saund. 238, n. 5.

NULL. Properly, that which does not .exist; that which is not in the nature of things. In a figurative sense it signifies that which has no more effect than if it did not exist. 8 Toull. n. 320.

NULIA BONA. The retum made to a writ of fieri facias, by the sheriff, when he has not found any goods of the defendant on which he could levy. 3 Bouv. Inst. n. 3393.

NULLITY. Properly, that which does not exist; that which is not properly in the nature of things. In a figurative sense, and in law, it means that which has no more effect than if it did not exist, and also the defect which prevents it from having such effect. That which is absolutely void.

2. It is a yule of law that what is abso− lutely null produces no effects whatever; as, if a man bad a wife in full life, and both aware of the fact, he married another wo− man, such second marriage would be nun and without any legal effect. Vide Chit, Contr. 228; 3 Chit. Pr. 522; 2 Archb.

Pr. K. B. 4th edit. 888; Bayl. Ch. Pr. 97.
3. Nullities have been divided into absolute and relative. Absolute nullities are those which may be insisted upon by any one having an interest in rendering the act, deed or writing null, even by the public authorities, as a second marriage while the former was in full force. Everything fraudulent is null and void. Relative nullities can be invoked only by those in whose favor the law has been established, land, in fact, such power is less a nullity of the act than a faculty which one or more persons have to oppose the validity of the act.

4. The principal causes of nullities are,

1. Defect of form; as, for example, when the law requires that a will of land shall be attested by three witnesses, and it is on] attested by two. Vide Will.
5.−2. Want of will; as, if a man be compelled to execute a bond by duress, it is null and void. Vide Duress.
6. − 3.
The incapacities of the parties; as in the cases of persons non compos mentis, of married women's contracts, and the like.

7.−4. The want of consideration in simple contracts; as a verbal promise without consideration.
8.−5. The want of recording, when the law requires that the matter should be recorded; as, in the case of judgments.
9.−6. Defect of power in the party who entered into a contract in behalf of another; as, when an attorney for a special purpose makes an agreement for his principal in relation to another thing. Vide Attorney; Authority.
10. − 7. The loss of a thing which is the subject of a contract; as, when A sells B horse, both supposing him to be alive, when in fact he was dead. Vide Contract; Sale.
Vide Perrin, Traite des Nullites; Henrion, Pouvoir Municipal, liv. 2, c. 18; Merl. Rep. h. t.; Dall. Diet. h. t. See art. Void.
NULIUS FILIUS. The son of no one; a bastard.
2. A bastard is considered nullius filius as far as regards his right inherit. But the rule of nullius filius does not apply in other respects.
3. The mother of a bastard, during its age of nurture, is entitled to the custody of her child, and is bound to maintain it. 6 S. & R. 255; 2 John. R. 375; 15 John. R. 208; 2 Mass. R. 109; 12 Mass. R. 387, 433; 1 New Rep. 148; sed vide 5 East, 224 n.
4. The putative father, too, is entitled to the custody of the child as against all but the mother. 1, Ashm. 55. And, it seems, that the putative father may maintain an action, as if his child were legitimate, for marrying him without his consent,

contrary. to law. Addis. 212. See Bastard; Child; Father; Mother;, Putative Father.

NULLUM ARBITRIUM, pleading. The name of a plea to an action on an arbitration bond for not fulfilling the award, by which the defendant asserts that there is no award.

NULLUM FECERUNT ARBITRIUM. The name of a plea to an action of debt upon an obligation for the performance of an award, by which the defendant denies that he submitted to arbitration, &c. Bac. Ab. Arbitr. &c. G.

NUMBER. A collection of units.

2. In pleading, numbers must be stated truly, when alleged in the recital of a record, written instrument, or express contract. Lawes' PI. 48; 4 T. R. 314; Cro. Car. 262; Dougl. 669; 2 Bl. Rep. 1104. But in other cases, it is not in general requisite that they should be truly stated, because they are not required to be strictly proved. If, for example, in an action of trespass the plaintiff proves the wrongful taking away of any part of the goods duly described in his declaration, he is entitled to recover pro tanto. Bac. Ab. Trespass, I 2 Lawes' PI. 48.

3. And sometimes, when the subject to be described is supposed to comprehend a multiplicity of particulars, a general description is sufficient. A declaration in trover alleging the conversion of " a library of books"' without stating their number, titles, or quality, was held 'to be sufficiently certain; 3 Bulst. 31; Carth. 110; Bac. Ab. Trover, F 1; and in an action for the loss of goods, by burning the plaintiff's bouse, the articles may be described by the simple denomination of " goods" or " divers goods." 1 Keb. 825; Plowd. 85, 118, 123; Cro. Eliz. 837; 1 H. Bl. 284.

NUNC PRO TUNC, practice. This phrase, which signifies now for then, is used to express that a thing is done at one time which ought to have been performed at another. Leave of court must be obtained to

do things nunc pro tunc, and this is granted to answer the purposes of justice, but never to do injustice A judgment nunc pro tunc can be entered only when the delay has arisen from the act of the court. 3 Man. Gr. & Sc. 970. Vide 1 V.. & B. 312; 1 Moll. R. 462; 13 Price, R. 604; 1 Hogan, R. 110.

NUNCIO. The name given to the Pope's ambassador. Nuncios are ordinary or ex−traordinary; the former are sent upon usual missionas, the latter upon special occasions.

NUNCIUS, international law, A mes−senger, a minister; the pope's legate, com−monly called a nuncio.

It is used to express that a will or testament. has been made verbally, and not in writing, Vide Testa−

ment nuncupative; Will, nuncupative; 1 Williams on Exec. 59; Swinb. Index, h. t.; Ayl. Pand. 359; 1 Bro. Civ. Law, 288; Roberts on Wills, h. t.; 4 Kent, Com. 504; 2 Bouv. Inst. n. 436.

NUNQUAM INDEBITATUS, pleading. A plea to an action of indebitatus assump−sit, by which the defendant asserts that he is not indebted to the plaintiff. 6 Carr. & P. 545 S. C. 25 English Com. Law Rep. 535; 1 Mees. & Wels. 542, 1 Q. B. 77.

NUPER OBIIT, practice. He or she lately died. The name of a writ, which in the English law, lies for a sister co−heiress, dispossessed by her coparcener of lands and tenements, whereof their father, brother, or any common ancestor died seised of an estate in fee simple. Termes de la Ley, h. t.; F. N . B. 197.

NURTURE. The act of taking care of children and educating them: the right to the nurture of children generally belongs to the father till the child shall arrive at the age of fourteen years, and not longer. Till then, he is guardian by nurture. Co. Litt. 38 b. But in special cases the mother will be preferred to the father; 5 Binn. R. 520; 2 S. & R. 174; and after the death of the father, the mother is guardian by nurture. Fl. 1. 1, c. 6; Com. Dig. Guardian, D.

NURUS. A daughter−in−law. Dig. 50, 16, 50.