IBIDEM. This word is used in references, when it is intended to say that a thing is to be found in the same place, or that the reference has for its object the same thing, case, or other matter. IOU, contracts. The memorandum IOU, (I owe you), given by merchants to each other, is a mere evidence of the debt, and does not amouut to a promissory note. Esp. Cas. N. A. 426; 4 Carr. & Payne, 324; 19 Eng. Com. L. Rep. 405; 1 Man. & Gran. 46; 39 E. C. L. R. 346; 1 Campb. 499; 1 Esp. R. 426; 1 Man. Gr. & So. 543; Dowl. & R. N. P. Cas. 8.

ICTUS ORBIS, med. jurisp. A maim, a bruise, or swelling; any hurt without cutting the skin. When the skin is cut, the injury is called a wound. (q. v.) Bract. lib. 2, tr. 2, c. 5 and 24.

2. Ictus is often used by medical authors in the sense of percussus. It is applied to the pulsation of the arteries, to any external lesion of the body produced by violence also to the wound inflicted by a scorpion or venomous reptile. Orbis is used in the sense of circlo, circuit, rotundity. It is applied also to the eye balls. Oculi dicuntur orbes. Castelli Lexicon Medicum.

IDEM SONANS. Sounding the same.

2. In pleadings, when a name which it is material to state, is wrongly spelled, yet if it be idem sonans with that proved, it is sufficient, as Segrave for Seagrave, 2 Str. R. 889; Keen for Keene, Thach. Cr. Cas. 67; Deadema for Diadema, 2 Ired. 346; Hutson for Hudson, 7 Miss. R. 142; Coonrad for Conrad, 8 Miss. R. 291. See 5 Pike, 72; 6 Ala. R. 679; vide also Russ. & Ry. 412; 2 Taunt. R. 401, In the following cases the variances there mentioned were declared to be fatal. Russ. & Ry. 351; 10 East, R. 83; 5 Taunt. R. 14; 1 Baldw. R. 83; 2 Crom. & M. 189; 6 Price, R. 2; 1 Chit. R. 659; 13 E. C. L. R. 194. See, generally, 8 Chit. Pr. 231, 2; 4 T. R. 611; 3 B. & P. 559; 1 Stark. R. 47; 2 Stark. R. 29; 3 Camp. R. 29; 6 M. & S. 45; 2 N. H. Rep. 557; 7 S. & R. 479; 3 Caines, 219; 1 Wash. C. C. R. 285; 4 Cowen, 148 and the article Name.

IDENTITATE NOMINIS, Engl. law. The name of a writ which lies for a person taken upon a capias or exigent and committed to prison, for another man of the same name; this writ directs the sheriff to inquire whether he be the same person against whom the action was brought, and if not, then to discharge him. F. N. B. 267. In practice, a party in this condition would be relieved by habeas corpus.

IDENTITY, evidence. Sameness.

2. It is frequently necessary to identify persons and things. In criminal prosecutions, and in actions for torts and on contracts, it is required to be proved that the defendants have in criminal actions, and for injuries, been guilty of the crime or injury charged; and in an action on a contract, that the defendant was a party to it. Sometimes, too, a party who has been absent, and who appears to claim an inheritance, must prove his identity and, not unfrequently, the body of a person which has been found dead must be identified: cases occur when the body is much disfigured, and, at other times, there is nothing left but the skeleton. Cases of considerable difficulty arise, in consequence of the omission to take particular notice; 2 Stark. Car. 239 Ryan's Med. Jur. 301; and in consequence of the great resemblance of two persons. 1 Hall's Am. Law Journ. 70; 1 Beck's Med. Jur. 509; 1 Paris, Med. Jur, 222; 3 Id. 143; Trail. Med. Jur. 33; Foder,, Med. Leg. ch. 2, tome 1, p. 78−139.

3. In cases of larceny, trover, replevin, and the like, the things in dispute must always be identified. Vide 4 Bl. Com. 396.

4. M. Briand, in his Manuel Complet de M,dicine L,gale, 4eme partie, ch. 1, gives rules for the discovery of particular marks, which an individual may have had, and also the true color of the hair, although it may have been artificially colored. He also gives some rules for the purpose of discovering, from the appearance of a skeleton, the sex, the age, and the height of the person when living, which he illustrates by various examples. See, generally, 6 C. & P 677; 1 C. & M. 730; 3 Tyr. 806; Shelf. on Mar. & Div. 226; 1 Hagg. Cons. R. 189; Best on Pres. Appx. case 4; Wills on Circums. Ev. 143, et seq.

IDES, NONES and CALENDS, civil law. This mode of computing time, formerly in use among the Romans, is yet used in several chanceries in, Europe, particularly in that of the pope. Many ancient instruments bear these dates; it is therefore proper to notice them here. These three words designate all the days of the month.

2. The calends were the first day of every month, and were known by adding the names of the months; as calendis januarii, calendis februarii, for the first days of the months of January and February. They designated the following days by those before the nones. The fifth day of each month, except those of March, May, July, and October; in those four months the nones indicated the seventh day; nonis martii, was therefore the seventh day of March, and so of the rest. In those months in which the nones indicated the fifth day, the second was called quarto nonas or 4 nonas, that is to say, quarto die ante nonas, the fourth day before the nones. The words die and ante,

being understood, were usually suppressed. The third day of each of those eight months was called tertio, or 3 nonas. The fourth, was pridie or 2 nonas; and the fifth was nonas. In the months of March, May, July and October, the second day of the months was called sexto or 6 nonas; the third, quinto, or 5 nonas; the fourth, quarto, or 4 nonas; the fifth, tertio, or 3 nonas; the sixth, pridie, usually abridged prid. or pr. or 2 nonas; and the seventh, nones. The word nonae is so applied, it is said, because it indicates the ninth day before the ides of each month.

3. In the months of March, May, July and October, the fifteenth day of the months was the Ides. These are the four mouths, as above mentioned, in which the nones were on the seventh day. In the other eight months of the year the nones were the fifth of the month, and the ides the thirteenth in each of them the ides indicated the ninth day after the nones. The seven days between the nones and the ides, which we count 8, 9, 10, 11, 12, 13, and 14, in March, May, July and October, the Romans counted octave, or 8 idus; septimo, or 7 idus; sexto, or 6 idus; quinto, or 5 idus; quarto, or 4 idus; tertio, or 3 idus; pridie, or 2, idus; the word ante being understood as mentioned above. As to the other eight mouths of the year, in which the nones indicated the fifth day of the month, instead of our 6, 7, 8, 9, 10, 11, and 12, the Romans counted octavo idus, septimo, &c. The word is said to be derived from the Tuscan, iduare, in Latin dividere, to divide, because the day of ides divided the month into equal parts. The days from the ides to the end of the month were computed as follows; for example, the fourteenth day of January, which was the next day after the ides, was called decimo nono, or 19 kalendas, or ante kalendas febrarii; the fifteenth, decimo octavo, or 18 kalindas februarii, and so of the rest. Counting in a, retrograde manner to pridie or 2 kalendas februarii, which was the thirty−first day of January.

4. As in some months the ides indicate the thirteenth, and in some the fifteenth of the month, and as the months have not an equal number of days, it follows that the decimo nono or 19 kalendas did not always happen to be the next day after the Ides, this was the case only in the months of January, August and December. Decimo sexto or the 16th in February; decimo septimo or 17, March, May, July and October; decimo octave or 18, in April, June, September, and November. Merlin, R,pertoire de Jurisprudence, mots Ides, Nones et Calendes.

A Table of the Calends of the Nones and the Ides.

Jan., Aug., Dec. 31 days.	³ March, May, ³ July, Oct., ³ 31 days.	³ April, June, ³ Sept., Nov., ³ 30 days.	³ February 28, ³ bissextile, ³ 29 days.
1 ³ Calendis.	³ Calendis	³ Calendis	³ Calendis
2 ³ 4 Nonas.	³ 6 Nonas	³ 4 Nonas	³ 4 Nonas
3 ³ 3 Nonas.	³ 5 Nonas	³ 3 Nonas	³ 3 Nonas
4 ³ Prid. Non.	³ 4 Nonas	³ Prid. Non.	³ Prid. Non.
5 ³ Nonis	³ 3 Nonas	³ Nonis	³ Nonis
6 ³ 8 Idus	³ Prid. Non.	³ 8 Idus	³ 8 Idus
7 ³ 7 Idus	³ Nonis	³ 7]dus	³ 7 Idus
8 ³ 6 Idus	³ 8 Idus	³ 6 Idus	³ 6 Idus
9 ³ 5 Idus	³ 7 Idus	³ 5 Idus	³ 5 Idus
10 ³ 4 Idus	³ 6 Idus	³ 4 Idus	³ 4 Idus
11 ³ 3 Idus	³ 5 Idus	³ 3 Idus	³ 3 Idus
12 ³ Prid. Idus	³ 4 Idus	³ Prid. Idus	³ Prid. Idus
18 ³ Idibus	³ 3 Idus	³ Idibiis	³ Idibus
14 ³ 19 Cal.	³ Prid. Idus	³ 18 Cal.	³ 16 Cal.
15 ³ 18 Cal.	³ Idibus	³ 17 Cal.	³ 15 Cal.
16 ³ 17 Cal.	³ 17 Cal.	³ 16 Cal.	³ 14 Cal.
17 ³ 16 Cal.	³ 16 Cal.	³ 15 Cal.	³ 3 Cal.
18 ³ 15 Cal.	³ 15 Cal.	³ 14 Cal.	³ 12 Cal.
19 ³ 14 Cal.	³ 14 Cal.	³ 13 Cal.	³ 11 Cal.
20 ³ 18 Chl.	³ 13 Cal.	³ 12 Cal.	³ 10 Cal.

21	3 12 Cal.	3 12 Cal.	3 11 Cal.	3 9 Cal.
22	3 11 Cal.	3 11 Cal.	3 10 Cal.	3 8 Cal.
23	3 10 Cal.	3 10 Cal.	3 9 Cal.	3 7 Cal.
24	3 9 Cal.	3 9 Cal.	3 8 Cal.	3 6 Cal.*
25	3 8 Cal.	3 9 Cal.	3 7 Cal.	3 5 Cal.
26	3 7 Cal.	3 7 Cal.	3 6 Cal.	3 4 Cal.
27	3 6 Cal.	3 6 Cal.	3 5 Cal.	3 3 Cal.
28	3 5 Cal.	3 5 Cal.	3 4 Cal.	3 Prid. Cal.
29	3 4 Cal.	3 4 Cal.	3 3 Cal.	3
30	3 3 Cal.	3 3 Cal.	3 Prid. Cal.	3
31	3 Prid. Cal.	3 Prid. Cal.	3	3

* If February is bissextile, Sexto Calencas (6 Cal.) it is counted twice, viz: for the 24th and 25th of the month, Hence the word bis−sextile.

IDIOCY, med. jur. That condition of mind, in which the reflective, or all or a part of the affective powers, are either entirely wanting, or are manifested to the least possible extent.

2. Idiocy generally depends upon organic defects. The most striking physical trait, and one seldom wanting, is the diminutive size of the head, particularly of the anterior superior portions, indicating a deficiency of the anterior lobes of the brain. According to Gall, whose observations on this subject are entitled to great consideration, its circumference, measured immediately over the orbiter arch, and the most prominent part of the occipital bone, is between 11« and 14« inches. Gall, sur les Fonctions, p. 329. In the intelligent adult, it usually measures from 21 to 22 inches. Chit. Med. Jur. 248. See, ou this subject, the learned work of Dr. Morton, of Philadelphia*, entitled Crania Americana. The brain of an idiot equals that of a new born infant; that is, about one−fourth, one−fifth, or one−sixth of the cerebral mass of an adult's in the enjoyment of his faculties. The above is the only constant character. observed in the heads of idiots. In other respects their forms are as various as those of other persons. When idiocy supervenes in early infancy, the head is sometime remarkable for immense size. This unnatural enlargement arises from some kind of morbid action preventing the development of the cerebral mass, and producing serous cysts, dropsical effusions, and the like.

3. In idiocy the features are irregular; the forehead low, retreating, and narrowed to a point; the eyes are unsteady, and often squint the lips are. thick, and the mouth is generally open; the gums are spongy, and the teeth are defective; the limbs are crooked and feeble. The senses are usually entirely wanting; many are deaf and dumb, or blind and others are incapable of perceiving odors, and show little or no discrimination in their food for want of taste. Their movements are constrained and awkward, they walk badly, and easily fall, and are not less awkward with their hands, dropping generally what is given to them. They are seldom able to articulate beyond a few sounds. They are generally affected with rickets, epilepsy, scrofula, or paralysis. Its subjects seldom live beyond the twenty−fifth year, and are incurable, as there is natural deformity which cannot be remedied. Vide Chit. Med. Jur. 345; Ray's Med. Jur. c. 2; 1 Beck's Med. Jur. 571 Shelf. on Lun. Index, h. t.; and Idiot.

IDIOT, Persons. A person who has been without understanding from his nativity, and whom the law, therefore, presumes never likely to attain any. Shelf. on Lun. 2.

2. It is an imbecility or sterility of mind, and not a perversion of the understanding. Chit. Med. Jur. 345, 327, note s; 1 Russ. on Cr. 6; Bac. Ab. h. t. A; Bro. Ab. h. t.; Co. Litt. 246, 247; 3 Mod. 44; 1 Vern. 16; 4 Rep. 126; 1 Bl. Com. 302. When a man cannot count or number twenty, nor tell his father's or mother's name, nor how old he is, having been frequently told of it, it is a fair presumption that, he is devoid of understanding. F. N. B. 233. Vide 1 Dow, P. C. now series, 392; S. C. 3 Bligh, R. new series, 1. Persons born deaf, dumb, and blind, are, presumed to be idiots, for the senses being the only inlets of knowledge, and these, the most important of them, being closed, all ideas and associations belonging to them are totally excluded from their minds. Co. Litt. 42 Shelf. on Lun. 3. But this is a mere presumption, which, like most others, may be rebutted; and doubtless a person born deaf, dumb, and blind, who could be taught to read and write, would not be considered an idiot. A remarkable instance of such an one may be found in the person of Laura Bridgman, who has been taught how to converse and even to write. This young woman was, in the year 1848, at school at South Boston. Vide Locke on Human Understanding, B. 2 c. 11, _12, 13; Ayliffe's Pand. 234; 4 Com. Dig. 610; 8 Com. Dig. 644.

3. Idiots are incapable of committing crimes, or entering into contracts. They cannot of course make a will; but

they may acquire property by descent.

Vide, generally, 1 Dow's Parl. Cas. new series, 392; 3 Bligh's R. 1; 19 Ves. 286, 352, 353; Stock ou the Law of Non Compotes Mentis; Bouv. Inst. Index, h. t.

IDIOTA INQUIRENDO, WRIT DE. This is the name of an old writ which directs the sheriff to inquire whether a man be an idiot or not. The inquisition is to be made by a jury of twelve men. Fitz. N. B. 232.

IDLENESS. The refusal or neglect to engage in any lawful employment, in order to gain a livelihood.

2. The vagrant act of 17 G. II. c. 5, which, with some modifications, has been adopted, in perhaps most of the states, describes idle persons to be those who, not having wherewith to maintain themselves, live idle, without employment, and refuse to work for the usual and common, wages. These are punishable according to the difrerent police regulations, with fine and imprisonment. In Pennsylvania, vagrancy is punished, on a conviction before a magistrate, with imprisonment for one mouth.

IGNIS JUDICIUM, Eng. law. The name of the old judicial trial by fire.

IGNOMINY. Public disgrace, infamy, reproach, dishonor. Ignominy is the opposite of esteem. Wolff, _145. See Infamy.

IGNORAMUS, practice. We are ignorant. This word, which in law means we are uninformed, is written on a bill by a grand jury, when they find that there is not sufficient evidence to authorize their finding it a true bill. Sometimes, instead of using this word, the grand jury endorse on the bill, "Not found." 4 Bl. Com. 305. Vide Grand Jury.

IGNORANCE. The want of knowledge.

2. Ignorance is distinguishable from error. Ignorance is want of knowledge; error is the non−conformity or opposition of our ideas to the truth. Considered as a motive of our actions, ignorance differs but little from error. They are generally found together, and what is said of one is said of both.

3. Ignorance and error, are of several kinds. 1. When considered as to their object, they are of law and of fact. 2. When examined as to their origin, they are voluntary or involuntary, 3. When viewed with regard to their influence on the affairs of men, they are essential or non−essential.

4. − _1. Ignorance of law and fact. 1. Ignorance of law, consists in the want of knowledge of those laws which it is our duty to understand, and which every man is presumed to know. The law forbids any one to marry a woman whose hushand is living. If any man, then, imagined he could marry such a woman, he would be ignorant of the law; and, if he married her, he would commit an error as to a matter of law. How far a party is bound to fulfil a promise to pay, upon a supposed liability, and in ignorance of the law, see 12 East, R. 38; 2 Jac. & Walk. 263; 5 Taunt. R. 143; 3 B. & Cresw. R. 280; 1 John. Ch. R. 512, 516; 6 John. Ch. R. 166; 9 Cowen's R. 674; 4 Mass. R. 342; 7 Mass. R. 452; 7 Mass. R. 488; 9 Pick. R. 112; 1 Binn. R. 27. And whether he can be relieved from a contract entered into in ignorance or mistake of the law. 1 Atk. 591; 1 Ves. & Bea. 23, 30; 1 Chan. Cas. 84; 2 Vern. 243; 1 John. Ch. R. 512; 2 John. Ch. R. 51; 1 Pet. S. C. R. 1; 6 John. Ch. R. 169, 170; 8 Wheat. R. 174; 2 Mason, R. 244, 342.

5. − 2. Ignorance of fact, is the want of knowledge as to the fact in question. It would be an error resulting from ignorance of a fact, if a man believed a certain woman to be unmarried and free, when in fact, she was a married woman; and were he to marry her under that belief, he would not be criminally responsible. Ignorance of the laws of a foreign government, or of another state; is ignorance of a fact. 9 Pick. 112. Vide, for the difference between ignorance of law and ignorance of fact, 9 Pick. R. 112; Clef. des Lois Rom. mot Fait; Dig. 22, 6, 7.

6. − _2. Ignorance is either voluntary or involuntary. 1. It is voluntary when a party might, by taking reasonable pains, have acquired the necessary knowledge. For example, every man might acquire a knowledge of the laws which have been promulgated, a neglect to become acquainted with them is therefore voluntary ignorance. Doct. & St. 1, 46; Plowd. 343.

7. − 2. Involuntary ignorance is that which does not proceed from choice, and which cannot be overcome by the use of any means of knowledge known to him
and within his power; as, the ignorance of a law which has not yet been promulgated.

8. − _3. Ignorance is either essential or non−essential. 1. By essential ignorance is understood that which has for its object some essential circumstance so intimately connected with the: matter in question, and which so influences the parties that it induces them to act in the business. For example, if A should sell his horse to B, and at the time of the sale the horse was dead, unknown to the parties, the fact of the death would render the sale void. Poth. Vente, n. 3 and 4; 2 Kent, Com. 367.

9. − 2. Non−essential or accidental ignorance is that which has not of itself any necessary connexion with the business in question, and which is not the true consideration for enteting into the contract; as, if a man should marry a woman whom he believed to be rich, and she proved to be poor, this fact would not be essential, and the marriage would therefore be good. Vide, generally, Ed. Inj. 7; 1 Johns. h. R. 512; 2 Johns. Ch. R. 41; S. C. 14 Johns. R 501; Dougl. 467; 2 East, R. 469; 1 Campb. 134: 5 Taunt. 379; 3 M. & S. 378; 12 East, R. 38; 1 Vern. 243; 3 P. Wms. 127, n.; 1 Bro. C. C. 92; 10 Ves. 406; 2 Madd. R. 163; 1 V. & B. 80; 2 Atk. 112, 591; 3 P. Wms. 315; Mos. 364; Doct. & Stud. Dial. 1, c. 26, p. 92; Id. Dial. 2, ch. 46, p. 303; 2 East, R. 469; 12 East, R. 38; 1 Fonbl. Eq. B. 1, ch. 2, _7, note v; 8 Wheat. R. 174; S. C. 1 Pet. S. C. R. 1; 1 Chan. Cas. 84; 1 Story, Eq. Jur. _137, note 1; Dig. 22, 6; Code, 1, 16; Clef des Lois Rom. h. t.; Merl. R,pert. h. t.; 3 Sav. Dr. Rom. Appendice viii., pp. 337 to 444.

ILL FAME. This is a technical expression, that which means not only bad character as generally understood, but every person, whatever may be his conduct and character in life, who visits bawdy houses, gaming houses, and other places which are of ill fame, is a person of ill fame. 1 Rogers' Recorder, 67; Ayl. Par. 276; 2 Hill, 558; 17 Pick. 80; 1 Hagg. Eccl. R. 720; 2 Hagg. Cons. R. 24; 1 Hagg. Cons. R. 302, 303; 1 Hagg. Eccl. R. 767; 2 Greenl. Ev. _44.

ILLEGAL. Contrary to law; unlawful.

2. It is a general rule, that the law will never give its aid to a party who has entered into an illegal contract, whether the same be in direct violation of a statute, against public policy, or opposed to public morals. .Nor to a contract which is fraudulent, which affects the defendant or a third person.

3. A contract in violation of a statute is absolutely void, and, however disguised, it will be set aside, for no form of expression can remove the substantial defect inherent in the nature of the transaction; the courts will investigate the real object of the contracting parties, and if that be repugnant to the law, it will vitiate the transaction.

4. Contracts against the public policy of the law, are equally void as if they were in violation of a public statute; a contract not to marry any one, is therefore illegal and void. See Void.

5. A contract against the purity of manners is also illegal; as, for example, a agreement to cohabit unlawfully with another, is therefore void; but a bond given for past cohabitation, being considered as remuneration for past injury, is binding. 4 Bouv. Inst. n. 3853.

6. All contracts which have for their object, or which may in their consequences, be injurious to third persons, altogether unconnected with them, are in general illegal and void. Of the first, an example may be found in the case where a sheriff's officer received a sum of money from a defendant for admitting to bail, and agreed to pay the bail, part of the money which was so exacted. 2 Burr. 924. The case of a wager between two persons, as to the character of a third, is an example of the second class. Cowp. 729; 4 Camp. 152; 1 Rawle, 42; 1 B. & A. 683. Vide lllicit; Unlawful.

ILLEGITIMATE. That which is contrary to law; it is usually applied to children born out of lawful wedlock. A bastard is sometimes called an illegitimate child.

ILLEVIABLE. A debt or duty that cannot or ought not to be levied. Nihil set upon a debt is a mark for illeviable.

ILLICIT. What is unlawful what is forbidden by the law. Vide Unlawful.

2. This word is frequently used in policies of insurance, where the assured warrants against illicit trade. By illicit trade is understood that "which is made unlawful by the laws of the country to which the object is bound." The assured having entered into this warranty, is required to do no act which will expose the vessel to be legally condemned. 2 L. R. 337, 338. Vide Insurance; Trade; Warranty.

ILLICITE. Unlawfully.

2. This word has a technical meaning, and is requisite in an indictment where the act charged is unlawful; as, in the case of a riot. 2 Hawk. P. C. 25, _96.

ILLINOIS. The name of one of the United States of America. This state was admitted into the Union by virtue of a "Resolution declaring the admission of the state of Illinois into the Union," passed December 3, 1818, in the following words: Resolved, &c. That, whereas, in pursuance of an Act of Congress, passed on the eighteenth day of April, one thousand eight hundred and eighteen, entitled "An act to enable the people of the Illinois territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states," the people of said territory did, on the twenty−sixth day of August, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, which constitution and state government, so formed, is republican, and in conformity to the principles of the articles of compact

between the original states and the people and States in the territory northwest of the river Ohio, passed on the thirteenth day of July, one thousand seven hundred and eighty−seven: Resolved, &c. That the state of Illinois shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever.

2. A constitution for this state, was adopted in convention held at Kaskaskia, on the 26th day of August, 1818, which continued in force until the first day of April; 1848. A convention to revise the constitution assembled at Springfield, June 7, 1847, in pursuance of an act of the general assembly of the state of Illinois, entitled "An act to provide for the call of a convention: On the first day of August, 1848, this convention adopted a constitution of the state of Illinois, and by the 13th section of the schedule thereof it provided that this constitution shall be the supreme law of the land from and after the first day of April, A. D. 1848.

3. It will be proper to consider, 1. The rights of citizens to vote at elections. 2. The distribution of the powers of government.

4. − 1. The sixth article directs that, _1. In all elections, every white male citizen above the age of twenty−one years, having resided in the state one year next preceding any election, shall be entitled to vote at such election; and every white male inhabitant of the age aforesaid, who may be a resident of the state' at the time of the adoption of this constitution, shall have the right of voting as aforesaid; but no such citizen or inhabitant shall be entititled to vote, except in the district or county in which he Shall actually reside lit the time of such election.

_2. All votes shall be given by ballot.

_5. No elector loses his residence in the state by reason of his absence on business of the United States, or this state.

_6. No soldier, seaman or mariner of the United States, is deemed a resident of the state, in consequence of being stationed within the state.

5. The second article distributes the powers of the government as follows:

_1. The powers of the government of the state of Illinois shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

2. No person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of, the others, except as hereinafter expressly directed or permitted; and all acts in contravention of this section shall be void. These will be separately considered.

6. The legislative department will be considered by taking a view, 1. Of those parts of the constitution which relate to the general assembly. 2. Of the senate. 3. Of the house of representatives.

7. − 1st. Of the general assembly. The third article of the constitution provides as follows

_1. The legislative authority of this state shall be vested in a general assembly; which shall consist of a senate and house of representatives, both to be elected by the people.

_2. The first election for senators and representatives shall be held on the Tuesday after the first Monday in November, one thousand eight hundred and forty−eight; and thereafter, elections for members of the general assembly shall be held once in two years, on the Tuesday next after the first Monday in November, in each and every county, at such places therein as may be provided by law.

_7. No person elected to the general sembly 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 general assembly, 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; nor shall any member of the general assembly be interested, either directly or indirectly, in any contract with the state, or any county thereof, authorized by any law passed during the time for which he shall have been elected, or during one year after the expiration thereof.

_12. The senate and house of representatives, when assembled, shall each choose a speaker and other officers, (the speaker of the senate excepted.) Each house shall judge of the qualifications and election of its own members, and sit upon its own adjournments. Two−thirds of each house shall constitute a quorum but a smaller number may adjourn from day to day, and compel the attendance of absent members.

_13. Each house shall keep a journal of its proceedings, and publish them. The yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journals.

_14. Any two members of either house shall have liberty to dissent and protest against any act or resolution which they may think injurious to the public, or to any individual, and have the reasons of their dissent entered on

the journals.

_15. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two−thirds of all the members elected, expel a member, but not a second time for the same cause; and the reason for such expulsion shall be entered upon the journal, with the names of the members voting on the question.

_16. When vacancies shall happen in either house, the govenor, or the person exercising the powers of governor, shall issue writs of election to fill such vacancies.

_17. Senators and representatives shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to and returning from the same and for any speech or debate in either house, they shall not be questioned in any other place.

_18. Each house may punish, by imprisonment during its session, any person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behaviour in their presence: Provided, such imprisonment shall not, at any one time, exceed twenty−four hours.

_19. The doors of each house, and of committees of the whole, shall be kept open, except in such cases as in the opinion of the house require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the two houses shall be sitting.

8. − 2d Of the senate. The senate will be considered by taking a view of, 1. The qualification of senators. 2. Their election. 3. By whom elected. 4. When elected. 5. Number of senators. 6. The duration of their office.

9. First. Art. 3, s. 4, of the Constitution, directs that "No person shall be a senator who shall not have attained the age of thirty years; who shall not be a citizen of the United States, five years an inhabitant of this state, and one year in the county or district in which he shall be chosen, immediately preceding his election, if such county or district shall have been so long erected; but if not, then within the Iimits of the county or counties, district or districts, out of which the same shall have been taken unless he shall have been absent on the public business of the United States, or of this state, and shall not, moreover, have paid a state or county tax."

10. Secondly. The senators at their first session herein provided for, shall be divided by lot, as near as can be, into two classes. The seats of the first class shall be vacated at the expiration of the second year, and those of the second class at the expiration of the fourth year; so that one−half thereof, as near as possible, may be biennially chosen forever thereafter. Art. 31 s. 5.

11. Thirdly. The senators are elected by the people.

12. Fourthly. The first election shall be held on the Tuesday after the first Monday in November, 1848; and thereafter the elections shall be on the Tuesday after the first Monday in November, once in two years. Art. 3, s. 2.

13. Fifthly. The senate shall consist of twenty−five members, and the house of representatives shall consist of seventy−five members, until the population of the state shall amount to one million. of souls, when five members may be added to the house, and five additional members for every five hundred thousand inhabitants thereafter, until the whole number of representatives shall amount to one hundred; after which, the number shall neither be increased nor diminished; to be apportioned among the several counties according to the number of white inhabitants. In all future apportionments, where more than one county shall be thrown into a representative district, all the representatives to which said counties may be entitled shall be elected by the entire district. Art. 3, s. 6.

14. Sixthly. The senators at their first session herein provided for shall be divided by lot, as near as can be, into two classes. The seats of the first class shall be vacated at the expiration of the second year, and those of the second class at the expiration of the fourth year, so that one−half thereof, as near as possible, may be biennially chosen forever thereafter. Art. 3, s. 5.

15. − 3. The house of representatives. This will be considered in the same order which has been observed in relation to the senate.

16. First. No person shall be a representative who shall not have attained the age of twenty−five years; who shall not be a citizen of the United States, and three years an inhabitant of this state; who shall not have resided within the limits of the county or district in which he shall be chosen twelve months next preceding his election, if such county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken, unless he shall have been absent on the public business of the United States, or of this state; and who, moreover, shall not have paid a state or county tax. Art. 3, s. 3.

17. Secondly. They are elected biennially.

18. Thirdly. Representatives are elected by the people.

19. Fourthly. Representatives are elected at the same time that senators are elected.

20. Fifthly. The house of representatives shall consist of seventy−five members. See ante, No. 16.

21. Sixthly. Their office continues for two years.

22. − 2. The executive department. The executive power is vested in a governor. Art. 4, s. 1. It will be proper to consider, 1. His qualifications. 2. His election: 3. The duration of his office. 4. His authority and duty.

23. First. 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−five years, and been ten years a resident of this state; and fourteen years a citizen of the United States. Art. 4 s. 4.

24. Secondly. His election is to be on the Tuesday next after the first Monday in November. The first election in 1848, and every fourth year afterwards.

25. Thirdly. He remains in office for four years. The first governor is to be installed on the first Monday of January, 1849, and the others every fourth; year thereafter.

26. Fourthly. His authority and duty. He may give information and recommend measures to the legislature, grant reprieves, commutations and pardons, except in cases of treason and impeachment, but in these cases he may suspend execution of the sentence until the meeting of the legislature − require information from the officers of the executive department, and take care that the laws be faithfully executed − on extraordinary occasions, convene the general assembly by proclamation be commander−in−chief of the army and navy of the state, except when they shall be called into the service of the United States − nominate, and, by and with the consent and advice of the senate, appoint all officers whose offices are established by the constitution, or which may be created by law, and whose appointments − are not otherwise provided for − in case of disagreement between the two houses with respect to the time of adjournment, adjourn the general assembly to such time as he thinks proper, provided it be not to a period beyond a constitutional meeting of the same. Art. 4. He has also the veto power.

27. A lieutenant governor shall be chosen at every election of governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant−governor. Art. 4, s. 14. The following are his principal powers and duties

_15. The lieutenant governor shall, by virtue of his office, be speaker of the senate, have a right, when in committee of the whole, to debate and vote on all subjects, and, whenever the senate are equally divided, to give the casting vote.

_16. Whenever the government shall be administered by the lieutenant− governor, or he shall be unable to attend as speaker of the senate, the senators shall elect one of their own, number as speaker for that occasion; and if, during the vacancy of the office of governor, the lieutenant governor shall be impeached, removed from his office, refuse to qualify, or resign, or die, or be absent from the state, the speaker of the senate shall, in like manner, administer the government.

_17. The lieutenant governor, while he acts as speaker of the senate, shall receive for his service the same compensation which, shall, for the same period, be allowed to the speaker of the house of representatives, and no more.

_18. If the lieutenant governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the state, during the recess of the general assembly, it shall be the duty of the secretary of state, for the time being, to convene the senate for the purpose of choosing a speaker.

_19. In case of the impeachment of the governor, his absence from the, state, or inability to discharge the duties of his office, the powers, duties, and emoluments of the office shall devolve upon the lieutenant governor and in case of his death, resignation, or removal, then upon the speaker of the senate for the time being, until the governor, absent or impeached, shall return or be acquitted; or until the disqualification or inability shall cease; or until a new governor shall be elected and qualified.

_20. In case of a vacancy in the office of governor, for any other cause than those herein enumerated, or in case of the death of the governor elect before he is qualified, the powers, duties, and emoluments of the office devolve upon the lieutenant governor, or speaker of the senate, as above provided, until a new governor be elected and qualified.

28. − 3. The judiciary department. The judicial power is vested in one supreme court, in circuit courts, in county

courts, and in justices of the peace; but inferior local courts, of civil and criminal jurisdiction, may be established by the general assembly in the cities of the state but such courts shall have a uniform organization and jurisdiction in such cities. Art. 5, s. 1. These will be separately considered.

29. − 1st. Of the supreme court, its organization and jurisdiction. 1. Of its organization. 1st. The judges must be citizens of the United States; have resided in the state five years previous to their respective elections; and two years next preceding their election in the division, circuit, or county in which they shall respectively be elected; and not be less than thirty−five years of age at the time of their election. 2d. The judges are elected each one in a particular district, by the people. But the legislature may change the mode of election. 3d. The supreme court consists of a chief justice and three associates, any two of whom form a quorum; and a concurrence of two of said judges is necessary to a decision. 4th. They hold their office for nine years. After the first election, the judges are to draw by lot, and one is to go out of office in three, one in six, and the other in nine years. And one judge is to be elected every third year. 2. Of thejurisdiction of the supreme court. This court has original jurisdiction in cases relative to the, revenue, in cases of mandamus, habeas corpus, and in such cases of impeachment as may be by law directed to be tried before it, and it has appellate jurisdiction in all other cases.

30. − 2d. Of the circuit courts, their organization and jurisdiction. 1st. Of their organization. The state is divided into nine judicial districts, in each of which a circuit judge, having the same qualifications as the supreme judges, except that he may be appointed at the age of thirty years, is elected by the qualified electors, who holds his office for six years and until his successor shall be commissioned and qualified; but the legislature may increase the number of circuits. 2d. Of their jurisdiction. The circuit courts have jurisdiction in all cases at law and equity, and in all cases of appeals from all inferior courts.

31. − 3d. Of the county courts. There is in each county a court to be called a county court. It is composed of one judge, elected by the people, who holds his office for four years. Its jurisdiction extends to all probate and such other jurisdiction as the general assembly may confer in civil cases, and in such criminal eases as may be prescribed by law, when the punishment is by fine only, not exeeeding one hundred dollars. The county judge, with such justices of the peace in each county as may be designated by law, shall hold terms for the transaction of county business, and shall perform such other duties as the general assembly shall prescribe; Provided, the general assembly may require that two justices, to be chosen by the qualified electors of each county, shall sit with the county judge in all cases; and there shall be elected, quadrennially, in each county, a clerk of the county court, who shall be ex officio recorder, whose compensation shall be fees; Provided, the general assembly may, by law, make the clerk of the circuit court ex officio recorder, in lieu of the county clerk.

32. − 4th. Of justices of the peace. There shall be elected in each county in this state, in such districts as the general assembly may direct, by the qualified electors thereof, a competent number of justices of the peace, who shall hold their offices for the term of four years, and until their successors shall have been elected and qualified, and who shall perform such duties, receive such compensation, and exercise such jurisdiction as may be prescribed by law.

ILLITERATE. This term is applied to one unacquainted with letters.

2. When an ignorant man, unable to read, signs a deed or agreement, or makes his mark instead of a signature, and he alleges, and can provide that it was falsely read to him, he is not bound by it, in consequence of the fraud. And the same effect would result, if the deed or agreement were falsely read to a blind man, who could have read before he lost his sight, or to a foreigner who did not understand the language. For a plea of "laymen and unlettered," see Bauer v. Roth, 4 Rawle, Rep. 85 and pp. 94, 95.

3. To induce an illiterate man, by false representations and false reading, to sign a note for a greater amount than that agreed on, is indictable as a cheat. 1 Yerg. 76. Vide, generally, 2 Nels. Ab. 946; 2 Co. 3; 11 Co. 28; Moor, 148.

ILLUSION. A species of mania in which the sensibility of the nervous system is altered, excited, weakened or perverted. The patient is deceived by the false appearance of things, and his reason is not sufficiently active and powerful to correct the error, and this last particular is what distinguishes the sane from the insane. Illusions are not unfrequent in a state of health, but reason corrects the errors and dissipates them. A square tower seen from a distance may appear round, but on approaching it, the error is corrected. A distant mountain may be taken for a cloud, but as we approach, we discover the truth. To a person in the cabin of a vessel under sail, the shore appears to move; but reflection and a closer examination soon destroy this illusion. An insane individual is mistaken on the qualities, connexions, and causes of the impressions he actually receives, and he forms wrong judgments as to

his internal and external sensations; and his reason does not correct the error. 1 Beck's Med. Jur. 538; Esquirol, Maladies Mentales, pr,m. partie, III., tome 1, p. 202. Dict. des Sciences M,dicales, Hallucination, tome 20, p. 64. See Hallucination.

ILLUSORY APPOINTMENT, chancery practice. Such an appointment or disposition of property under a power as is merely nominal and not substantial.

2. Illusory appointments are void in equity. Sugd. Pow. 489; 1 Vern. 67; 1 T. R. 438, note; 4 Ves. 785; 16 Ves. 26; 1 Taunt. 289; and the article Appointment.

TO IMAGINE, Eng. law. In cases of treason the law makes it a crime to imagine the death of the king. In order to complete the offence there must, however, be an overt act the terms compassing and imagining being synonymous. It. has been justly remarked that the words to compass and imagine are too vague for a statute whose penalty affects the life of a subject. Barr. on the Stat. 243, 4. Vide Fiction.

IMBECILITY, med. jur. A weakness of the mind, caused by the absence or obliteration of natural or acquired ideas; or it is described to be an abnormal deficiency either in those faculties which acquaint us with the qualities and ordinary relations of things, or in those which furnish us with the moral motives that regulate our relations and conduct towards our fellow men. It is frequently attended with excessive activity. of one or more of the animal propensities.

2. Imbecility differs from idiocy in this, that the subjects of the former possess some intellectual capacity, though inferior in degree to that possessed by the great mass of mankind; while those of the latter are utterly destitute of reason. Imbecility differs also from stupidity. (q. v.) The former consists in a defect of the mind, which renders it unable to examine the data presented to it by the senses, and therefrom to deduce the correct judgment; that is, a defect of intensity, or reflective power. The latter is occasioned by a want of intensity, or perceptive power.

3. There are various degrees of this disease. It has been attempted to classify the degrees of imbecility, but the careful observer of nature will perhaps be soon satisfied that the shades of difference between one species and another, are almost imperceptible. Ray, Med. Jur. ch. 3; 2 Beck, Med. Jur. 550, 542; 1 Hagg. Ecc. R. 384; 2 Philm. R. 449; 1 Litt. R. 252, 5 John. Ch. R. 161; 1 Litt. R. 101; Des Maladies mentales, consider,es dans leurs rapports avec la legislation civille et criminelle, 8; Georget, Discussion medico−l,gale sur la folie, 140.

IMMATERIAL. What is not essential; unimportant what is not requisite; what is informal; as, an immaterial averment, an immaterial issue.

2. When a witness deposes to something immaterial, which is false, although he is guilty of perjury in foro conscientiae, he cannot be punished for perjury. 2 Russ. on Cr. 521; 1 Hawk. b. 1, c. 69, s. 8; Bac. Ab. Perjury, A.

IMMATERIAL AVERMENT. One alleging with needless particularity or unnecessary circumstances, what is material and requisite, and which, properly, might have been stated more generally, or without such circumstances or particulars; or, in other words, it, is a statement of unnecessary particulars, in connexion with, and as descriptive of, what is material. Gould on Pl. c. 3, _186.

2. It is highly improper to introduce immaterial averments, because, when they are made, they must be proved; as, if, a plaintiff declare for rent on a demise which is described as reserving a certain annual rent, payable "by four even and equal quarterly payments," &c.; and on the trial it appears that there was no stipulation with regard to the time or times of payment of the rents, the plaintiff cannot recover. The averment as to the time, though it need not have been made, yet it must be proved, and the plaintiff having failed in this, he cannot recover; as there is a variance between the contract declared upon and the contract proved. Dougl. 665.

3. But when the immaterial averment is such that it may be struck out of the declaration, without striking out at the same time the cause of action, and when there is no variance between the contract as, laid in the declaration and that proved, immaterial averments then need not be proved. Gould on Pl. C. 3, _188.

lMMATERIAL ISSUE. One taken on a point not proper to decide the action; for example, if in an action of debt on bond, conditioned for the payment of ten dollars and fifty cents at a certain day, the defend ant pleads the payment of ten dollars according to the form of the condition, and the plaintiff, instead of demurring, tenders issue upon the payment, it is manifest that, whether this issue be found for the plaintiff or the defendant, it will remain equally uncertain whether the plaintiff is entitled to maintain his action, or not; for, in an action for the penalty of a bond, conditioned to pay a certain sum, the only material question is, whether the exact sum were paid or not, and the question of payment of a part is a question quite beside the legal merits. Hob. 113; 5 Taunt. 386.

IMMEDIATE. That which is produced directly by the act to which it is ascribed, without the intervention or agency of any distinct intermediate cause.

2. For immediate injuries the remedy is trespass; for those which are consequential, an action on the case. 11 Mass. R. 59, 137, 525; 1 & 2 Ohio R. 342; 6 S. & R. 348; 18 John. 257; 19 John. 381; 2 H. & M. 423; 1 Yeates, R. 586; 12 S & R. 210; Coxe, R. 339; Harper's R. 113; 6 Call's R . 44; 1 Marsh. R. 194.

3. When an immediate injury is caused by negligence, the injured party may elect to regard the negligence as the immediate cause of action, and declare in case; or to consider the act itself as the immediate injury, and sue in trespass. 14 John. 432; 6 Cowen, 342; 3 N. H. Rep. 465; sed vide 3 Conn. 64; 2 Bos. & Pull. New Rep. by Day, 448, note. See Cause.

IMMEMORIAL. That which commences beyond the time of memory. Vide Memory, time of.

IMMEMORIAL POSSESSION. In Louisiana, by this term is understood that of which no man living has seen the beginning, and the existence of which he has learned from his elders. Civ. Code of Lo. art. 762; 2 M. R. 214; 7 L. R. 46; 3 Toull. p. 410; Poth. Contr. de Societ„ n. 244; 3 Bouv. Inst. n. 3069, note.

IMMIGRATION. The removing into one place from another. It differs from emigration, which is the moving from one place into another. Vide Emigration.

IMMORAL CONSIDERATION. One contrary to good morals, and therefore invalid. See Moral obligation.

IMMORALITY. that which is contra bonos mores. In England, it is not punishable in some cases, at the common law, on, account of the ecclesiastical jurisdictions: e. g. adultery. But except in cases belonging to the ecclesiastical courts, the court of king's bench is the custom morum, and may punish delicto contra bonos mores. 3 Burr. Rep. 1438; 1 Bl. Rep. 94; 2 Strange, 788. In Pennsylvania, and most, if not all the United States, all such cases come under one and the same jurisdiction.

2. Immoral contracts are generally void; an agreement in consideration of future illicit cohabitation between the parties; 3 Burr. 1568; S. C. 1 Bl. Rep. 517; 1 Esp. R. 13; 1 B. & P. 340, 341; an agreement for the value of libelous and immoral pictures, 4 Esp. R. 97; or for printing a libel, 2 Stark. R. 107; or for an immoral wager, Chit. Contr. 156, cannot, therefore, be enforced. For whatever arises from an immoral or illegal consideration, is void: quid turpi ex causa promissum est non valet. Inst. 3, 20, 24.

3. It is a general rule, that whenever an agreement appears to be illegal, immoral, or against public policy, a court of justice leaves the parties where it finds them; when the agreement has been executed, the court will not rescind it; when executory, the count will not help the execution. 4 Ohio R. 419; 4 John. R. 419; 11 John. R. 388; 12 John. R. 306; 19 John. R. 341; 3 Cowen's R. 213; 2 Wils. R. 341.

IMMOVABLES, civil law. Things are movable or immovable. Immovables, res immobiles, are things in general, such as cannot move themselves or be removed from one place to another. But this definition, strictly speaking, is applicable only to such things as are immovable by their own nature, and not to such as are so only by the destination of the law.

2. There are things immovable by their nature, others by their destination, and others by the objects to which they are applied.

3. − 1. Lands and buildings or other constructions, whether they have their foundations in the soil or not, are immovable by their nature. By the common law, buildings erected on the land are not considered real estate, unless they have been let into, or united to the land, or to substances previously connected therewith. Ferard on Fixt. 2.

4. − 2. Things, which the owner of the land has placed upon it for its service and improvement, are immovables by destination, as seeds, plants, fodder, manure, pigeons in a pigeon−house, bee−hives, and the like. By the common. law, erections with or without a foundation, when made for the purpose of trade, are considered personal estate. 2 Pet. S. C. Rep. 137; 3 Atk. 13; Ambl. 113

5. − 3. A servitude established on real estate, is an instance of an immovable, which is so considered in consequence of the object to which it is applied. Vide Civil Code of Louis. B. 2, t. 1, c. 2, art. 453−463; Poth. Des Choses, _1; Poth. de la Communante, n. 25, et seq; Clef des Lois Romaines, mot Immeubles.

IMMUNITY. An exemption from serving in an office, or performing duties which the law generally requires other citizens to perform. Vide Dig. lib. 50, t. 6; 1 Chit. Cr. L. 821; 4 Har. & M'Hen. 341.

IMMUTABLE. What cannot be removed, what is unchangeable. The laws of God being perfect, are immutable, but no human law can be so considered.

IMPAIRING THE OBLIGATION OF CONTRACTS. The Constitution of the United States, art. 1, s. 9, cl. 1, declares that no state shall "pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts."

2. Contracts, when considered in relation to their effects, are executed, that is, by transfer of the possession of the thing contracted for; or they are executory, which gives only a right of action for the subject of the contract. Contracts are also express or implied. The constitution makes no distinction between one class of contracts and the other. 6 Cranch, 135; 7 Cranch, 164.

3. The obligation of a contract here spoken of is a legal, not a mere moral obligation; it is the law which binds the party to perform his undertaking. The obligation does not inhere or subsist in the contract itself, proprio vigore, but in the law appli− cable to the contract. 4 Wheat. R. 197; 12 Wheat. R. 318; and. this law is not the universal law of nations, but it is the law of the state where the contract is made. 12 Wheat. R. 213. Any law which enlarges, abridges, or in any manner changes the intention of the parties, resulting from the stipulations in the contract, necessarily impairs it. 12 Wheat. 256; Id. 327; 3 Wash. C. C. Rep. 319; 8 Wheat. 84; 4 Wheat. 197.

4. The constitution forbids the states to pass any law impairing the obligation of contracts, but there is nothing in that instrument which prohibits Congress from passing such a law. Pet. C. C. R. 322. Vide, generally, Story on the Const. _1368 to 1891 Serg. Const. Law, 356; Rawle on the Const. h. t.; Dane's Ab. Index, h. t.; 10 Am. Jur. 273−297.

TO IMPANEL, practice. The writing the names of a jury on a schedule, by the sheriff or other officer lawfully authorized.

IMPARLANCE, pleading and practice. Imparlance, from the French, parler, to speak, or licentia loquendi, in its most general signification, means time given by the court to either party to answer the pleading of his opponent, as either, to plead, reply, rejoin, &c., and is said to be nothing else but the continuance of the cause till a further day. Bac. Abr. Pleas, C. But the more common signification of the term is time to plead. 2 Saund. 1, n. 2; 2 Show. 3 10; Barnes, 346; Lawes, Civ. Pl. 93, 94.

2. Imparlances are of three descriptions: First. A common or general imparlance. Secondly. A special imparlance. Thirdly. A general special imparlance.

3. − 1. A general imparlance is the entry of a general prayer. and allowance of time to plead till the next term, without reserving to the defendant the benefit of any exception; so that, after such an imparlance, the defendant cannot object to the jurisdiction of the court, or plead any matter in abatement. This kind of imparlance is always from one term to another.

4.−2. A special imparlance reserves to the defendant all exception to the writ, bill, or count; and, therefore, after it, the defendant may plead in abatement, though not to the jurisdiction of the court.

5. − 3. A general special imparlance contains a saving of all exceptions whatsoever, so that the defendant, after this, may plead, not only in abatement, but he may also plead a plea which affects the jurisdiction of the court, as privilege. He cannot, however, plead a tender, and that he was always ready to pay, because, by craving time, he admits he is not ready, and so falsifies his plea. Tidd's Pr. 418, 419. The last two kinds of imparlances are, it seems, sometimes from one day to another in the same term. See, in general, Com. Dig Abatement, I 19, 20, 21; 1 Chit. Pl. 420; Bac. Abr. Pleas, C; 14 Vin. Abr. 335; Com. Dig. Pleader, D; 1 Sell. Pr. 265; Doct. Pl. 291; Encycl. de M. D'Alembert, art. Delai (Jurisp.)

IMPEACHMENT, const. law, punishments. Under the constitution and laws of the United States, an impeachment may be described to be a written accusation, by the house of representatives of the United States, to the senate of the United States, against an officer. The presentment, written accusation, is called articles of impeachment.

2. The constitution declares that the house of representatives shall have the sole power of impeachment art. 1, s. 2, cl. 5 and that the senate shall have the sole power to try all impeachments. Art. 1, s. 3, cl. 6.

3. The persons liable to impeachment are the president, vice−president, and all civil officers of the United States. Art. 2, s. 4. A question arose upon an impeachment before the senate, in 1799, whether a senator was a civil officer of the United States, within the purview of this section of the constitution, and it was decided by the senate, by a vote of fourteen against eleven, that he was not. Senate Journ., January 10th, 1799; Story on Const. _791; Rawle on Const. 213, 214 Serg. Const. Law, 376.

4. The offences for which a guilty officer may be impeached are, treason, bribery, and other high crimes and misdemeanors. Art. 2, s. 4. The constitution defines the crime of treason. Art. 3, s. 3. Recourse must be had to the common law for a definition of bribery. Not having particularly mentioned what is to be understood by "other high crimes and misdemeanors," resort, it is presumed, must be had to parliamentary practice, and the common law, in order to ascertain what they are. Story, _795.

5. The mode of proceeding, in the institution and trial of impeachments, is as follows: When a person who may be legally impeached has been guilty, or is supposed to have been guilty, of some malversation in office, a resolution is generally brought forward by a member of the house of representatives, either to accuse the party, or for a committee of inquiry. If the committee report adversely to the party accused, they give a statement of the charges, and recommend that he be impeached; when the resolution is adopted by the house, a committee is appointed to impeach the party at the bar of the senate, and to state that the articles of impeachment against him will be exhibited in due time, and made good before the senate, and to demand that the senate take order for the appearance of the party to answer to the impeachment. The house then agree upon the articles of impeachment, and they are presented to the senate by a committee appointed by the house to prosecute the impeachment; the senate then issues process, summoning the party to appear at a given day before them, to answer to the articles. The process is served by the sergeant−at−arms of the senate, and a return is made of it to the senate, under oath. On the return−day of the process, the senate resolves itself into a court of impeacmment, and the senators are sworn to do justice, according to the constitution and laws. The person impeached is called to answer, and either appears or does not appear. If he does not appear, his default is recorded, and the senate may proceed ex parte. If he does appear, either by himself or attorney, the parties are required to form an issue, and a time is then assigned for the trial. The proceedings on the trial are conducted substantially as they are upon common judicial trials. If any debates arise among the senators, they are conducted in secret, and the final decision is given by yeas and nays; but no person can be convicted without the concurrence of two−thirds of the members present. Const. art. 1, s. 2, cl. 6.

6. When the president is tried, the chief justice shall preside. The judgment, in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States. Proceedings on impeachments under the state constitutions are somewhat similar. Vide Courts of the United States.

IMPEACHMENT, evidence. An allegation, supported by proof, that a witness who has been examined is unworthy of credit.

2. Every witness is liable to be impeached as to his character for truth; and, if his general character is good, he is presumed, at all times, to be ready to support it. 3 Bouv. Inst. n. 3224, et seq.

IMPEACHMENT OF WASTE. It signifies a restraint from committing waste upon lands or tenements; or a demand of compensation for waste done by a tenant who has but a particular estate in the land granted, and, therefore, no right to commit waste.

2. All tenants for life, or any less estate, are liable to be impeached for waste, unless they hold without impeachment of waste; in the latter case, they may commit waste without being questioned, or any demand for compensation for the waste done. 11 Co. 82.

IMPEDIMENTS, contracts. Legal objections to the making of a contract. Impediments which relate to the person are those of minority, want of reason, coverture, and the like; they are sometimes called disabilities. Vide Incapacity.

2. In the civil law, this term is used to signify bars to a marriage. These impediments are classed, as they are applied to particular persons, into absolute and relative; as they relate to the contract and its validity, they are dirimant (q. v.) and prohibitive. (q. v.) 1. The absolute impediments are those which prevent the person subject to them from marrying at, all, without either the nullity of marriage, or, its being punishable. 2. The relative impediments are those which regard only certain persons with regard to each other; as, the marriage of a brother to a sister. 3. The dirimant impediments are those which render a marriage void; as, where one of the contracting parties is already married to another person. 4. Prohibitive impediments are those which do not render the marriage null, but subject the parties to a punishment. Bowy. Mod. Civ. Law, 44, 45.

IMPERFECT. That which is incomplete.

2. This term is applied to rights and obligations. A man has a right to be relieved by his fellow−creatures, when in distress; but this right he cannot enforce by law; hence it is called an imperfect right. On the other hand, we are bound to be grateful for favors received, but we cannot be compelled to perform such imperfect obligations. Vide Poth. Ob. arc. Pr,liminaire; Vattel, Dr. des Gens, Prel. notes, _17; and Obligations.

IMPERIUM. The right to command, which includes the right to employ the force of the state to enforce the laws; this is one of the principal attributes of the power of the executive. 1 Toull. n. 58.

IMPERTINENT, practice, pleading. What does not appertain, or belong to; id est, qui ad rem non pertinet.

2. Evidence of facts which do not belong to the matter in question, is impertinent and inadmissible. In general, what is immaterial is impertinent, and what is material is, in general, not impertinent. 1 McC. & Y. 337. See Gresl. Ev. Ch. 3, s. 1, p. 229. Impertinent matter, in a declaration or other pleading is that which does not belong to the subject; in such case it is considered as mere surplusage, (q. v.) and is rejected. Ham. N. P. 25. Vide 2 Ves. 24; 5 Madd. R. 450; Newl. Pr. 38; 2 Ves. 631; 5 Ves. 656; 18 Eng. Com. Law R. 201; Eden on Inj. 71.

3. There is a difference between matter merely impertinent and that which is scandalous; matter may be impertinent, without being scandalous; but if it is scandalous, it must be impertinent.

4. In equity a bill cannot, according to the general practice, be referred for impertinence after the defendant has answered or submitted to answer, but it may be referred for scandal at any time, and even upon the application of a stranger to the suit. Coop. Eq. Pl. 19; 2 Ves. 631; 6 Ves. 514; Story, Eq. Pl. _270. Vide Gresl. Eq. Ev. p. 2, c. 3, s, 1; 1 John. Ch. R. 103; 1 Paige's R. 555; I Edw. R. 350; 11 Price, R. 111; 5 Paige's R. 522; 1 Russ. & My. 28; Bouv. Inst. Index, h. t.; Scandal.

IMPETRATION. The obtaining anything by prayer or petition. In the ancient English statutes, it signifies a pre−obtaining of church benefices in England from the church of Rome, which belonged to the gift of the king, or other lay patrons.

TO IMPLEAD, practice. To sue or prosecute by due course of law. 9 Watts, 47.

IMPLEMENTS. Such things as are used or employed for a trade, or furniture of a house.

IMIPLICATA, mar. law. In order to avoid the risk of making fruitless voyages, merchants have been in the habit of receiving small adventures on freight at so much per cent, to which they are entitled at all events, even if the adventure be lost. This is what the Italians call implicata. Targa, chap. 34 Emer. Mar. Loans, s. 5.

IMPLICATION. An inference of something not directly declared, but arising from what is admitted or expressed.

2. It is a rule that when the law gives anything to a man, it gives him by implication all that is necessary for its enjoyment. It is also a rule that when a man accepts an office, he undertakes by implication to use it according to law, and by non−user he may forfeit it. 2 B1. Com. 152.

3. An estate in fee simple will pass by implication; 6 John.. R. 185; IS John. R. 31; 2 Binn. R. 464, 532; such implication must not only be a possible or probable one, but it must be plain and necessary that is, so strong a probability of intention that an intention contrary to that imputed to the testator cannot be supposed. 1 Ves. & B. 466; Willes, 141; 1 Ves. jr. 564; 14 John. R. 198. Vide, generally, Com. Dig. Estates by Devise, N 12, 13; 2 Rop. Leg. 342; 14 Vin. Ab. 341; 5 Ves. 805; 5 Ves. 582; 3 Ves. 676.

IMPORTATION, comm. law. The act of bringing goods and merchandise into the United States from a foreign country. 9 Cranch, 104, 120; 5 Cranch, 368; 2 Mann. & Gr. 155, note a.

2. To prevent the mischievous interference of the several states with the national commerce, the constitution of the United States, art. 1, s. 10, provides as follows: "No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress."

3. This apparently plain provision has received a judicial construction. In the year 1821, the legislature of Maryland passed an act requiring that all importers of foreign articles, commodities, &c., by the bale or package, of wine, rum, &c., and other persons selling the same by wholesale, bale or package, hogshead, barrel or tierce, should, before they were authorized to sell, take out a license for which they were to pay fifty dollars, under certain penalties. A question arose whether this act was or was not a violation of the constitution of the United States, and particularly of the above clause, and the supreme court decided against the constitutionality of the law. 12 Wheat. 419.

4. The act of congress of March 1, 1817, 3 Story, L. U. S. 1622, provides:

5. − _1. That, after the 30th day of September next, no goods, wares, or merchandise, shall be imported into the United States from any foreign port or place, except in vessels of the United States, or in such foreign vessels as truly or wholly belong to the citizens or subjects of that country of which the goods are the growth, production or manufacture; or from which such goods, wares or merchandise, can only be or most usually are, first shipped for transportation: Provided, nevertheless, That this regulation shall not extend to the vessels of any foreign nation which has not adopted, and which shall not adopt a similar regulation.

6. − _2. That all goods, wares or merchandise, imported into the United States contrary to the true intent and

meaning of this act, and the ship or vessel wherein the same shall be imported, together with her cargo, tackle, apparel, and furniture, shall be forfeited to the United States and such goods, wares, or merchandise, ship, or vessel, and cargo, shall be liable to be seized, prosecuted, and condemned, in like manner, and under the same regulations, restrictions, and provisions, as have been heretofore established for the recovery, collection, distribution, and remission, of forfeitures to the United States by the several revenue laws.

7. − _4. That no goods, wares, or merchandise, shall, be imported, under penalty of forfeiture thereof, from one port of the United States to another port of the United States, in a vessel belonging wholly or in part to a subject of any foreign power; but this clause shall not be construed to prohibit the sailing of any foreign vessel from one to another port of the United States, provided no goods, wares, or mere other than those imported in such vessel from some foreign port, and which shall not have been unladen, shall be carried from one port or place to another in the United States.

8. − _6. That after the 30th day of September next, there shall be paid upon every ship or vessel of the United States, which shall be entered in the United States from any foreign port or place, unless the officers, and at least two−thirds of the crew thereof, shall be proved citizens of the United States, or persons not the Subjects of any foreign prince or state, to the satisfaction of the collector, fifty cents per ton: And provided also, that this section shall not extend to ships or vessels of the United States, which are now on foreign voyages, or which may depart from the United States prior to the first day of May next, until after their return to some port of the United States.

9.− _7. That the several bounties and remissions, or abatements of duty, allowed by this act, in the case of vessels having a certain proportion of seamen who are American citizens, or persons not the subjects of any foreign power, shall be allowed only, in the case of vessels having such proportion of American seamen during their whole voyage, unless in case of sickness, death or desertion, or where the whole or part of the crew shall have been taken prisoners in the voyage. Vide article Entry of goods at the Custom−house.

IMPORTS. Importations; as no state shall lay any duties on imports or exports. Const. U. S. Art. 1, s. 10; 7 How. U. S. Rep. 477.

IMPORTUNITY. Urgent solicitation, with troublesome frequency and pertinacity.

2. Wills and devises are sometimes set aside in consequence of the importunity of those who have procured them. Whenever the importunity is such as to deprive the devisor of the freedom, of his will, the devise becomes fraudulent and void. Dane’s Ab. ch. 127, a. 14, s. 5, 6, 7; 2 Phillim. R. 551, 2.

IMPOSITIONS. Imposts, taxes, or contributions.

IMPOSSIBILITY. The character of that which. cannot be done agreeably to the accustomed order of nature.

2. It is a maxim that no one is bound to perform an impossibility. A l’impossible nul n’est tenu. 1 Swift’s Dig. 93; 6 Toull. n. 121, 481.

3. As to impossible conditions in contracts, see Bac. Ab. Conditions, M; Co. Litt. 206; Roll. Ab. 420; 6 Toull. n. 486, 686; Dig. 2, 14, 39; Id. 44, 7, 31; Id. 50, 17, 185; Id. 45, 1, 69. On the subject of impossible conditions in wills, vide 1 Rop. Leg. 505; Swinb. pt. 4, s. 6; 6 Toull. 614. Vide, generally, Dane’s Ab. Index, h. t.; Clef des Lois Rom. par Fieff, Lacroix, h. t.; Com. Dig. Conditions, D 1 & 2; Vin. Ab. Conditions, C a, D a, E a.

IMPOSTS. This word is sometimes used to signify taxes, or duties, or impositions; and, sometimes, in the more restrained sense of a duty on imported goods and merchandise . The Federalist, No. 30; 3 Elliott’s Debates, 289; Story, Const. _949.

2. The Constitution of the United States, art. 1, s. 8, n. 1, gives power to congress "to lay and collect taxes, duties, imposts and excises." And art. 1, s. 10, n. 2, directs that "no state shall, without the consent of congress, lay any imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." See Bac. Ab. Smuggling, B; 2 Inst. 62; Dy. 165 n.; Sir John Davis on Imposition.

IMPOTENCE, med. jur. The incapacity for copulation or propagating the species. It has also been used synonymously with sterility.

2. Impotence may be considered as incurable, ourable, accidental or temporary. Absolute or incurable impotence, is that for which there is no known relief, principally originating in some malformation or defect of the genital organs. Where this defect existed at the time of the marriage, and was incurable, by the ecclesiastical law and the law of several of the American states, the marriage may be declared void ab initio. Com. Dig. Baron and Feme, C 3; Bac. Ab. Marriage, &c., E 3; 1 Bl. Com. 440; Beck’s Med. Jur. 67; Code, lib. 5, t. 17, l. 10; Poynt. on Marr. and Div. ch. 8; 5 Paige, 554; Merl. R,p. mot Impuissance. But it seems the party naturally impotent cannot allege that fact for the purpose of obtaining a divorce. 3 Phillim. R. 147; S. C. 1 Eng. Eccl. R. 384. See 3 Phillim.

R. 325; S. C. 1 Eng. Eccl. R. 408; 1 Chit. Med. Jur. 877; 1 Par. & Fonbl. 172, 173. note d; Ryan's Med. Jur. 95. to 111; 1 Bl. Com. 440; 2 Phillm. R. 10; 1 Hagg. R. 725. See, as to the signs of impotence, 1 Briand, M,d. L,g. c. 2, art. 2, _2, n. 1; Dictionnaire des Sciences M,dicales, art. Impuissance; and, generally, Trebuchet, Jur. de la. Med. 100, 101, 102; 1 State Tr. 315; 8 State Tr. App. No. 1, p. 23; 3 Phillm. R. 147; 1 Hagg. Eccl. R. 523; Foder,, M,d. L,g. _237.

IMPRESCRIPTIBILITY. The state of being incapable of prescription.

2. A property which is held in trust is imprescriptible; that is the trustee cannot acquire a title to it by prescription; nor can the borrower of a thing get a right to it by any lapse of time, unless he claims an adverse right to it during the time required by law.

IMPRIMATUR. A license or allowance to one to print.

2. At one time, before a book could be printed in England, it was requisite that a permission should be obtained that permission was called an imprimatur. In some countries where the press is liable to censure, an imprimatur is required.

IMPRIMERY. In some of the ancient English statutes this word is used to signify a printing−office, the art of printing, a print or impression.

IMPRIMIS. In the first place; as, imprimis, I direct my just debts to be paid. See Item.

IMPRISONMENT. The restraint of a person contrary to his will. 2 Inst. 589; Baldw. Rep. 239, 600. Imprisonment is either lawful or unlawful; lawful imprisonment is used either for crimes or for the appearance of a party in a civil suit, or on arrest in execution.

2. Imprisonment for crimes is either for the appearance of a person accused, as when he cannot give bail; or it is the effect of a sentence, and then it is a part of the punishnient.

3. Imprisonment in civil cases takes place when a defendant on being sued on bailable process refuses or cannot give the bail legally demanded, or is under a capias ad satisfaciendum, when he is taken in execution under a judgment. An unlawful imprisonment, commonly called false imprisonment, (q. v.) meaus any illegal imprisonment whatever, either with or without process, or under color of process wholly illegal, without regard to any question whether any crime has been committed or a debt due.

4. As to what will amount to an imprisonment, the most obvious modes are confinement in a prison or a private house, but a forcible detention in the street, or the touching of a person by a peace officer by way of arrest, are also imprisonments. Bac. Ab. Trespass, D 3; 1 Esp. R. 431, 526. It has been decided that lifting up a person in his chair, and carrying him out of the room in which he was sitting with others, and excluding him from the room, was not an imprisonment; 1 Chit. Pr. 48; and the merely giving charge of a person to a peace officer, not followed by any actual apprehension of the person, does not amount to an imprisonment, though the party to avoid it, next day attend at a police; 1 Esp. R. 431; New Rep. 211; 1 Carr. & Pavn. 153; S. C. II Eng. Com. Law, R. 351; and if, in consequence of a message from a sheriff's officer holding a writ, the defendant execute and send him a bail bond, such submission to the process will not constitute an arrest. 6 Bar. & Cres. 528; S. C. 13 Eng. Com. Law Rep. 245; Dowl. & R. 233. Vide, generally, 14 Vin. Ab. 342; 4 Com. Dig. 618; 1 Chit. Pr. 47; Merl. R,pert. mot Emprisonment; 17 Eng. Com. L. R. 246, n.

IMPROBATION. The act by which perjury or falsehood is proved. Techn. Dict. h. t.

IMPROPRIATION, eccl. law. The act, of employing the revenues of a church living to one's own use; it is also a parsonage or ecclesiastical living in the hands of a layman, or which descends by inheritance. Techn. Dict. h. t.

IMPROVEMENT, estates. This term is of doubtful meaning It would seem to apply principally to buildings, though generally it extends to amelioration of every description of property, whether real or personal; it is generally explained by other words.

2. Where, by the terms of a lease, the covenant was to 1eave at the end of the term a water−mill with all the fixtures, fastenings, and improvements, during the demise fixed, fastened, or set up on or upon the premises, in good plight and condition, it was held to include a pair of new millstones set up by the lessee during the term, although the custom of the country in general authorized the tenant to remove them. 9 Bing. 24; 3 Sim. 450; 2 Ves. & Bea. 349. Vide 3 Yeates, 71; Addis. R. 335; 4 Binn. R. 418; 5 Binn. R. 77; 5 S. & R. 266; 1 Binn. R. 495; 1 John. Ch. R. 450; 15 Pick. R. 471. Vide Profits. 2 Man. & Gra. 729, 757; S. C. 40 Eng. C. L. R. 598, 612.

3. Tenants in common are not bound to pay for permanent improvements, made on the common property, by one of the tenants in common without their consent. 2 Bouv. Inst. n. 1881.

IMPROVEMENT, rights. An addition of some useful thing to a machine, manufacture or composition of matter.

2. The patent law of July 4, 1836, authorizes the granting of a patent for any new and useful improvement on any art, machine manufacture or composition of matter. Sect. 6. It is often very difficult to say what is a new and useful improvement, the cases often approach very near to each other. In the present improved state of machinery, it is almost impracticable not to employ the same elements of motion, and in some particulars, the same manner of operation, to produce any new effect. 1 Gallis. 478; 2 Gallis. 51. See 4 B. & Ald. 540; 2 Kent, Com. 370.

IMPUBER, civil law. One who is more than seven years old, or out of infancy, and who has not attained the age of an adult, (q. v.) and who is not yet in his puberty that is, if a boy, till he has attained his full age of fourteen years, and, if a girl, her full age of twelve years. Domat, Liv. Prel. t. 2, s. 2, n. 8.

IMPUNITY. Not being punished for a crime or misdemeanor committed. The impunity of crimes is one of the most prolific sources whence they arise. lmpunitas continuum affectum tribuit delinquenti. 4 Co. 45, a; 5 Co. 109, a.

IMPUTATION. The judgment by which we declare that an agent is the cause of his free action, or of the result of it, whether good or ill. Wolff, _3.

IMPUTATION OF PAYMENT. This term is used in Louisiana to signify the appropriation which is made of a payment, when the debtor owes two debts to the creditor. Civ. Code of Lo. art. 2159 to 2262. See 3 N. S. 483; 6 N. S. 28; Id. 113: Poth. Ob. n. 539, 565, 570; Durant. Des Contr. Liv. 3, t. 3, _3, n. 191; 10 L. R. 232, 352; 7 Toull. n. 173, p. 246.

IN ALIO LOCO. In another place. Vide Cepit in alio loco.

IN ARTICULO MORTIS. In the article of death; at the point of death. As to the effect of this condition on wills, see Nuncupative; as to the testimony of such person, see Dying declarations.

IN AUTRE DROIT. In another's right. An executor, administrator or trustee, is said to have the property confided to him in such character, in autre droit.

IN BLANK. This is generally applied to indorsements, as, indorsements in blank, which is one not restricted, made by the indorser simply writing his name. See Indorsement.

IN CHIEF. Evidence is said to be in chief when it is given in support of the case opened by the leading counsel. Vide To Open − Opening. The term is used to distinguish evidence of this nature from evidence obtained on a cross−examination. (q. v.) 3 Chit. 890. By evidence in chief is sometimes meant that evidence, which is given in contradistinction to evidence which is obtained on the witness voir dire.

2. Evidence in chief should be confined to such matters as the pleadings and the opening warrant, and a departure from this rule, will be sometimes highly inconvenient, if not fatal. Suppose, for example, that two assaults have been committed, one in January and the other. in February, and the plaintiff prove his cause of action to have been the assault in January, he cannot abandon that, and afterwards prove another committed in February unless the pleadings and openings extend to both. 1 Campb R. 473. See also, 6 Carr. & P. 73; S. C. 25 E. C. L. R. 288; 1 Mood. & R. 282.

IN COMMENDAM. The state or condition of a church living, which is void or vacant, and it is commended to the care of some one. In, Louisiana, there is a species of partnership called a partnership in commendam. Vide Commendam.

IN CUSTODIA LEGIS. In the custody of the law. In general, when things are in custodia legis, they cannot be distrained, nor otherwise interfered with by a private person.

IN ESSE. In being. A thing in existence. It is used in opposition to enposse. A child in ventre sa mere is a thing in posse; after he is born, he is in esse. Vide 1 Supp. to Ves. jr. 466; 2 Suppl. to Ves. jr. 155, 191. Vide Posse.

IN EXTREMIS. This phrase is used to denote the end of life; as, a marriage in extremis, is one made at the end of life. Vide Extremis.

IN FACIENDO. In doing, or in feasance. 2 Story, Eq. Jurisp. _1308.

IN FAVOREM LIBERTATIS. In favor of liberty.

IN FAVOREM VITAE. In favor of life.

IN FIERI. In the course of execution; a thing commenced but not completed. A record is said to be in fieri during the term of the court, and, during that time, it may be amended or altered at the sound discretion of the court. See 2 B. & Adol. 971.

IN FORMA PAUPERIS. In the character or form of a pauper. In England, in some cases, when a poor person cannot afford to pay the costs of a suit as it proceeds, he is exempted from such payment, having obtained leave to sue in forma pauperis.

IN FORO CONSCIENTIAE. Before the tribunal of conscience; conscientiously. This term is applied in opposition, to the obligations which the law enforces.

2. In the sale of property, for example, the concealment of facts by the vendee which may enhance the price, is wrong in foro conscientiae, but there is no legal obligation on the part of the vendee to disclose them, and the contract will be good if not vitiated by fraud. Poth. Vent. part 2, c. 2, n. 233; 2 Wheat. 185, note c.

ÿ20 IN FRAUDEM LEGIS. In fraud of the law. Every thing done in fraudem legis is void in law. 2 Ves. sen. 155, 156 Bouv. Inst. n. 585, 3834.

IN GREMIO LEGIS. In the bosom of the law. This is a figurative expression, by which is meant, that the subject is under the protection of the law; as, where land is in abeyance.

IN GROSS. At large; not appurtenant or appendant, but annexed to a man's per son: e. g. Common granted to a man and his heirs by deed, is common in gross; or common in gross may be claimed by prescriptive right. 2 Bl. Com. 34.

IN INVITUM. Against an unwilling party; against one who has not given his consent. See Invito domino.

IN JUDICIO. In the course of trial; a course of legal proceedings.

IN JURE. In law; according to law, rightfully. Bract. fol. 169, b.

IN LIMINE. In or at the beginning. This phrase is frequently used; as, the courts are anxious to check crimes in limine.

IN LITEM, ad litem. For a suit; to the suit. Greenl. Ev. _348.

IN LOCO PARENTIS. In the place of a parent; as, the master stands towards his apprentice in loco parentis.

IN MITIORI SENSU, construction. Formerly in actions of slander it was a rule to take the expression used in mitiori sensu, in the mildest acceptation; and ingenuity was, upon these occasions, continually exercised to devise or discover a meaning which by some remote possibility the speaker might have intended; and some ludicrous examples of this ingenuity may be found. To say of a man who was making his livelihood by buying and selling merchandise, he is a base, broken rascal, he has broken twice, and I'll make him break a third time, was gravely asserted not to be actionable − "ne poet dar porter action, car poet estre intend de burstness de belly," Latch, 114. And to call a man a thief was declared to be no slander for this reason, "perhaps the speaker might mean he had stolen a lady's heart."

2. The rule now is to construe words agreeably to the meaning usually attached to them. 1 Nott & McCord, 217; 2 Nott & McCord, 511; 8 Mass. R. 248; 1 Wash. R. 152; Kirby, R. 12; 7 Serg. & Rawle, 451; 2 Binn. 34; 3 Binn. 515.

IN MORA. In default. Vide mora, in.

IN NUBIBUS. In the clouds. This is a figurative expression to signify a state of suspension or abeyance. 1 Co. 137.

IN NULLO EST ERRATUM, pleading. A plea to errors assigned on proceedings in error, by which the defendant in error affirms there is no error in the record. As to the effect of, such plea, see 1 Vent. 252; 1 Str. 684; 9 Mass. R. 532; 1 Burr. 410; T. Ray. 231. It is a general rule that the plea in nullo est erratum confesses the fact assigned for error; Yelv. 57; Dane's Ab. Index, h. t.; but not a matter assigned contrary to the record. 7 Wend. 55; Bac. Ab. Error; G.

IN ODIUM SPOLIATORIS. In hatred of a despoiler. All things are presumed against a despoiler or wrong doer in odium spoliatoris omnia praesumuntur.

IN PARI CAUSA. In an equal cause. It is a rule that when two persons have equal rights in relation to a particular thing, the party in possession is considered as having the better right: in pari causa possessor potior est. Dig. 50; 17, 128; 1 Bouv. Inst. n. 952.

IN PARI DELICTO. In equal fault; equal in guilt. Neither courts of law nor equity will interpose to grant relief to the parties, when an illegal agreement has been made, and both parties stand in pari delicto. The law leaves them where it finds them, according to the maxim, in pari delicto potior est conditio defendentis et possidendis. 1 Bouv. Inst. n. 769.

IN PARI MATERIA. Upon the same matter or subject. Statutes in pari materia are to be construed together.

IN PERPETUAM REI MEMORIAM. For the perpetual memory or remembrance of a thing. Gilb. For. Rom. 118.

IN PERSONAM, remedies. A remedy in personam, is one where the proceedings are against the person, in contradistinction to those which are against specific things, or in rem. (q. v.) 3 Bouv. Inst. n. 2646.

IN POSSE. In possibility; not in actual existence; used in contradistinction to in esse.

IN PRAESENTI. At the present time; used in opposition to in futuro. A marriage contracted in words de praesenti is good; as, I take Paul to be my hushand, is a good marriage, but words de futuro would not be sufficient, unless the ceremony was followed by consummation. 1 Bouv. Inst. n. 258.

IN PRINCIPIO. At the beginning this is frequently used in citations; as Bac. Ab. Legacies, in pr.

IN PROPRIA PERSONA. In his own person; himself; as the defendant appeared in propria persona; the plaintiff argued the cause in propria persona.

IN RE. In the matter; as in re A B, in the matter of A B.

IN REBUS. In things, cases or matters.

IN REM, remedies. This technical term is used to designate proceedings or actions instituted against the thing, in contradistinction to personal actions which are said to be in personam. Proceedings in rem include not only judgments of property as forfeited, or as prize in the admiralty, or the English exchequer, but also the decisions of other courts upon the personal status, or relations of the party, such as marriage, divorce, bastardy, settlement, or the like. 1 Greenl. Ev. __525, 541.

2. Courts of admiralty enforce the performance of a contract by seizing into their custody the very subject of hypothecation; for in these case's the parties are not personally bound, and the proceedings are confined to the thing in specie. Bro. Civ. and Adm. Law, 98; and see 2 Gall. R. 200; 3 T. R. 269, 270.

3. There are cases, however, where the remedy is either in personam or in rem. Seamen, for example, may proceed against the ship or cargo for their wages, and this is the most expeditious mode; or they may proceed against the master or owners. 4 Burr. 1944; 2 Bro. C. & A. Law, 396. Vide, generally, 1 Phil. Ev. 254; 1 Stark. Ev. 228; Dane's Ab. h. t.; Serg. Const. Law, 202, 203, 212.

IN RERUM NATURA. In the nature of things; in existence.

IN SOLIDO. A term used in the civil law, to signify that a contract is joint.

2. Obligations are in solido, first, between several creditors; secondly, between several debters. 1. When a person contracts the obligation of one and the same thing, in favor of several others, each of these is only creditor for his own share, but he may contract with each of them for the whole when such is the intention of the parties, so that each of the persons in whose favor the obligation is contracted, is creditor for the whole, but that a payment made to any one liberates the debtor against them all. This is called solidity of obligation. Poth. Obl. pt. 2, c. 3, art. 7. The common law is exactly the reverse of this, for a general obligation in favor of several persons, is a joint obligation to them all, unless the nature of the subject, or the particularity of the expression lead to a different conclusion. Evans' Poth. vol. 2, p. 56. See tit. Joint and Several; Parties to action.

3. − 2. An obligation is contracted in solido on the part of the debtors, when each of them is obliged for the whole, but so that a payment made by one liberates them all. Poth. Obli. pt. 2, c. 3, art. 7, s 1. See 9 M. R. 322; 5 L. R. 287; 2 N. S. 140; 3 L. R. 352; 4 N. S. 317; 5 L. R. 122; 12 M. R. 216; Burge on Sur. 398−420.

IN STATU QUO. In the same situation; in the same place; as, between the time of the submission and the time when the award was rendered, things remained in statu quo.

IN TERROREM. By way of threat, terror, or warning. For example, when a legacy is given to a person upo condition not to dispute the validity or the dispositions in wills and testaments, the conditions are not in general obligatory, but only in terrorem; if, therefore, there exist probabilis causa litigandi, the non−observance of the conditions will not be a forfeiture. 2 Vern. 90; 1 Hill. Ab. 253; 3 P. Wms. 344; 1 Atk. 404. But when the acquiescence of the legatee appears to be a material ingredient in the gift, the bequest is only quousque the legatee shall refrain from disturbing the will. 2 P. Wms. 52; 2 Ventr. 352. For cases of legacies given to a wife while she shall continue unmarried, see 1 Madd. R. 590; 1 Rop. Leg. 558.

IN TERROREM POPULI. To the terror of the people. An indictment for a riot is bad, unless it conclude in terrorem populi. 4 Carr. & Payne, 373.

IN TOTIDEM VERhis. In just so many words; as, the legislature has declared this to be a crime in totidem verhis.

IN TOTO. In the whole; wholly; completely; as, the award is void in toto. In the whole the part is contained: in toto et pars continetur. Dig. 50, 17, 123.

IN TRANSITU. During the transit, or removal from one place to another.

2. The transit continues until the goods have arrived at their place of destination, and nothing remains to be done to complete the delivery; or until the goods have been delivered, before reaching their place of destination, and

the person entitled takes an actual or symbolical possession. Vide Stoppage in transitu; Transitus.

IN VADIO. In pledge; in gage.

IN VENTRE SA MERE. In his mother's womb.

2. − 1. In law a child is for all beneficial purposes considered as born while in ventre sa mere. 5 T. R. 49; Co. Litt. 36; 1 P. Wms. 329; Civ. Code of Lo. art. 948. But a stranger can acquire no title by descent through a child in ventre sa mere, who is not subsequently born alive. See Birth; Dead Born.

3. − 2. Such a child is enabled to have an estate limited to his use. 1. Bl. Com. 130.

4. − 3. May have a distributive share of intestate property. 1 Ves. 81.

5. − 4. Is capable of taking a devise of lands. 2 Atk. 117; 1 Freem. 224, 298.

6. − 5. Takes under a marriage settlement a provision made for children living at the death of the father. 1 Ves. 85.

7. − 6. Is capable of taking a legacy, and is entitled to a share in a fund bequeathed to children under a general description, of "children," or of "children living at the testator's death." 2 H. Bl. 399; 2 Bro. C. C. 320; S. C. 2 Ves. jr. 673; 1 Sim. & Stu. 181; 1 B. & P. 243; 5 T. R. 49. See, also, 1 Ves. sr. 85; Id. 111; 1 P. Wms. 244, 341; 2 Bro. C. C. 63; Amb. 708, 711; 1 Salk. 229; 2 P. Wms. 446; 2 Atk. 114; Pre. Ch. 50; 2 Vern. 710; 3 Ves. 486; 7 T. R. 100; 4 Ves. 322; Bac. Ab. Legacies, &c., A; 1 Rop. Leg. 52, 3; 5 Serg. & Rawle, 40.

8. − 7. May be appointed executor. Bac. Ab. Infancy, B.

9. − 8. A bill may be brought in its behalf, and the court will grant an injunction to stay waste. 2 Vern. 710 Pr. Ch. 50.

10. − 9. The mother, of a child in ventre sa mere may detain writings on its behalf. 2 Vern. 710.

11. − 10. May have a guardian assigned to it. 1 Bl. Com. 130.

12. − 11. The destruction of such a child is a high misdemeanor. 1 Bl. Com. 129, 130.

13. − 12. And the birth of a posthumous child amounts, in Pennsylvania, to the revocation of a will previously executed, so far as regards such child. 3 Binn. 498. See Coop. Just. 496. See, as to the law of Virginia on this subject, 3 Munf. 20. Vide Foetus.

IN WITNESS WHEREOF. These words, which, when conveyancing was in the Latin language, were in cujus rei testimonium, are the initial words of the concluding clause in deeds. " In witness whereof the said parties have hereunto set their hands," &c.

INADEQUATE PRICE. This term is applied to indicate the want of a sufficient consideration for a thing sold,or such a price as, under ordinary circumstances, would be considered insufficient.

2. Inadequacy of price is frequently connected with fraud, gross misrepresentations, or an intentional concealment of the defects in the thing sold. In these cases it is clear the. vendor cannot compel the buyer to fulfil the contract. 1 Lev. 111; 1 Bro. P. C. 187; 6 John. R. 110; 3 Cranch, 270; 4 Dall. R. 250; 3 Atk. 283; 1 Bro. C. C. 440.

3. In general, however, inadequacy of price is not sufficient ground to avoid a contract, particularly' when the property has been sold by auction. 7 Ves. jr. 30; 3 Bro. C. C. 228; 7 Ves. jr. 35, note. But if an uncertain consideration, as a life annuity, be given for an estate, and the contract be executory, equity, it seems, will enter into the adequacy of the consideration. 7 Bro. P. C. 184; 1 Bro. C. C. 156. Vide. 1 Yeates, R. 312; Sugd. Vend. 189 to 199; 1 B. & B. 165; 1 M'Cord's Ch. R. 383, 389, 390; 4 Desaus. R. 651. Vide Price.

INADMIISSIBLE. What cannot be received. Parol evidence, for example, is inadmissible to contradict a written agreement.

INALIENABLE. This word is applied to those things, the property of which cannot be lawfully transferred from one person to another. Public highways and rivers are of this kind; there are also many rights which are inalienable, as the rights of liberty, or of speech.

INAUGURATION. This word was applied by the Romans to the ceremony of dedicating some temple, or raising some man to the priesthood, after the augurs had been consulted. It was afterwards applied to the installation (q. v.) of the emperors, kings, and prelates, in imitation of the ceremonies of the Romans when they entered into the temple of the augurs. It is applied in the United States to the installation of the chief magistrate of the republic, and of the governors of the several states.

INCAPACITY. The want of a quality legally to do, give, transmit, or receive something.

2. It arises from nature, from the law, or from both. From nature, when the party has not his senses, as, in the case of an idiot; from the law, as, in the case of a bastard who cannot inherit from nature and the law; as, in the

case of a married woman, who cannot make contracts or a will.

3. In general, the incapacity ceases with the cause which produces it. If the idiot should obtain his senses, or the married woman's hushand die, their incapacity would be at an end.

4. When a cause of action arises during the incapacity of a person having the right to sue, the act of limitation does not, in general, commence to run till the incapacity has been removed. But two incapacities cannot be joined in order to come within the statute.

INCENDIARY, crim. law. One who maliciously and wilfully sets another person's house on fire; one guilty of the crime of arson.

2. This offence is punished by the statute laws of the different states according to their several provisions. The civil law punished it with death, Dig. 47, 9, 12, 1, by the offender being cast into the fire. Id. 48, 19, 28, 12; Code, 9, 1, 11. Vide Dane's Ab. Index, h. t.

INCEPTION. The commencement; the beginning. In making a will, for example, the writing is its inception. 3 Co. 31 b; Plowd. 343. Vide Consummation; Progression.

INCEST. The carnal copulation of a man and a woman related to each other in any of the degrees within which marriage is prohibited by law. Vide Marriage. It is punished by fine and imprisonment, under the laws of the respective states., Vide 1 Smith's Laws of Pennsylv. 26; Dane's Ab. Index, h. t.; Dig. 23, 2, 68; 6 Conn. R. 446; Penal Laws of China, B. 1, s. 2, _10; Sw. part 2 _17, p. 103.

INCH. From the Latin uncia. A measure of length, containing one−twelfth part of a foot.

INCHOATE. That which is not yet completed or finished. Contracts are considered inchoate until they are executed by all the parties who ought to have executed them. For example, a covenant which purports to be tripartite, and is executed by only two of the parties, is incomplete, and no one is bound by it. 2 Halst. 142. Vide Locus paenitentiae.

INCIDENT. A thing depending upon, appertaining to, or following another, called the princinal.

2. The power of punishing for contempt is incident to a court of record; rent is incident to a reversion; distress to rent; estovers of woods to a tenancy for a life or years. 1 Inst. 151; Noy's Max. n. 13; Vin. Ab. h.. t.; Dane's Ab. h. t.; Com. Dig. h. t., and the references there; Bro. Ab. h. t.; Roll's Ab. 75.

INCIPITUR, practice. This word, which means "it is begun," signifies the commencement of the entry on the roll. on signing judgment, &c.

INCLUSIVE. Comprehended in computation. In computing time, as ten days from a particular time, one day is generally to be included and one excluded. Vide article Exclusive, and the authorities there cited.

INCOME. The gain which proceeds from property, labor, or business; it is applied particularly to individuals; the income of the government is usually called revenue.

2. It has been holden that a devise of the income of land, is in effect the same as a devise of the land itself. 9 Mass. 372; 1 Ashm. 136.

INCOMPATIBILITY. offices, rights. This term is used to show that two or more things ought not to exist at the same time in the same person; for example, a man cannot at the same time be landlord and tenant of the same land; heir and devise of the same thing; trustee and cestui que trust of the same property.

2. There are offices which are incompatible with each other by constitutional provision; the vice−president of tho United States cannot act as such when filling the office of president; Const. art. 1, s. 3, n. 5; and by the same instrument, art . 1, s. 6, n. 2, it is directed that "no senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either house, during his continuance in office."

3. Provisions rendering offices incompatible are to be found in most of the, constitutions of the states, and in some of their laws. In Pennsylvania, the acts of the 12th of February, 1802, 3 Smith's Laws of Pa. 485; and 6th of March, 1812, 5 Sm. L. Pa. 309, contain various provisions, making certain offices incompatible, with each other. At common law, offices subordinate and interfering with each other have been considered incompatible; for example, a man cannot be at once a judge and prothonotary or clerk of the same court. 4 Inst. 100. Vide 4 S. & R. 277; 17 S. & R. 219; and the article Office.

INCOMPETENCY, French law. The state of a judge who cannot take cognizance of a dispute brought before him; it implies a want of jurisdiction.

2. Incompetency is material, ratione materia, or personal, ratione personae. The first takes place when a judge

takes cognizance of a matter over which another judge has the sole jurisdiction, and this cannot be cured by the appearance or agreement of the parties.

3. The second is, when the matter in dispute is within the jurisdiction of the judge, but the parties in the case are not; in which case they make the judge competent, unless they make their objection before they. take defence. See Peck, 374; 17 John. 13; 12 Conn. 88; 3 Cowen, Rep. 724; 1 Penn. 195; 4 Yeates, 446. When a party has a privilege which exempts him from the jurisdiction, he may waive the privilege. 4 McCord, 79; Wright, 484; 4 Mass. 593; Pet. C. C. R. 489; 5 Cranch, 288; 1 Pet. R. 449; 4 W. C. C. R. 84; 8 Wheat. 699; Merl. R,p. mot Incompet,nce.

4. It is a maxim in the common law, aliquis non debet esse judex in propri*ƒ* causa. Co. Litt. 141, a; see 14 Vin. Abr. 573; 4 Com. Dig. 6. The greatest delicacy, is constantly observed on the part of judges, so that they never act when there could be the possibility of doubt whether they could be free from bias, and even a distant degree of relationship has induced a judge to decline interfering. 1 Knapp's Rep. 376. The slightest degree of pecuniary interest is considered as an insuperable objection. But at common law, interest forms the only ground for challenging a judge. It is not a ground of challenge that he has given his opinion before. 4 Bin. 349; 2 Bin. 454. See 4 Mod. 226; Comb. 218; Hard. 44; Hob. 87; 2 Binn. R. 454; 13 Mass. R. 340; 5 Mass. R. 92; 6 Pick. 109; Peck, R. 374; Coxe, Rep. 190; 3 Ham. R. 289; 17 John. Rep. 133; 12 Conn. R. 88; 1 Penning R. 185; 4 Yeates, R. 466; 3 Cowen, R. 725; Salk. 396; Bac. Ab. Courts, B; and the articles Competency; Credibility; Interest; Judge; Witness.

INCOMPETENCY, evidence. The want of legal fitness, or ability in a witness to be heard as such on the trial of a cause.

2. The objections to the competency (q. v.) of a witness are four−fold. The first ground is the want of understanding; a second is defect of religious principles; a third arises from the conviction of certain crimes, or infamy of character; the fourth is on account of interest. (q. v.) 1 Phil. Ev. 15.

INCONCLUSIVE. What does not put an end to a thing. Inconclusive presumptions are those which may be overcome by opposing proof; for example, the law presumes that he who possesses personal property is the owner of it, but evidence is allowed to contradict this presumption, and show who is the true owner. 3 Bouv. Inst. in. 3063.

INCONTINENCE Impudicity, the indulgence in unlawful carnal connexions. Wolff, Dr. de la Nat. _862.

INCORPORATION. This term is frequently confounded, particularly in the old books, with corporation. The distinction between them is this, that by incorporation is understood the act by which a corporation is created; by corporation is meant the body thus created. Vide Corporation.

INCORPORATION, civil law. The union of one domain to another.

INCORPOREAL. Not consisting of matter.

2. Things incorporeal. are those which are not the object of sense, which cannot be seen or felt, but which we can easily, conceive in the understanding, as rights, actions, successions, easements, and the like. Dig. lib. 6, t. 1; Id. lib. 41, t. 1, l. 43, _1; Poth. Traite des Choses, _2.

INCORPOREAL HEREDITAMENT, title, estates. A right issuing out of, or annexed unto a thing corporeal.

2. Their existence is merely in idea and abstracted contemplation, though their effects and profits may be frequently the objects of our bodily senses. Co Litt. 9 a; Poth. Traite des Choses, _2. According to Sir William Blackstone, there are ten kinds of incorporeal hereditamenta; namely, 1. Advowsons. 2. Tithes. 3. Commons. 4. Ways. 5. Offices. 6. Dignities. 7. Franchises. 8. Corodies. 9. Annuities. 10. Rents. 2 Bl. Com. 20.

3. But, in the United States, there, are no advowsons, tithes, dignities, nor corodies. The other's have no necessary connexion with real estate, and are not hereditary, and, with the exception of annuities, in some cases, cannot be transferred, and do not descend.

INCORPOREAL PROPERTY, civil law. That which consists in legal right merely; or, as the term is, in the common law, of choses in actions. Vide Corporeal property.

TO INCULPATE. To accuse one of a crime or misdemeanor.

INCUMBENT, eccles. law. A clerk resident on his benefice with cure; he is so called because he does, or ought to, bend the whole of his studies to his duties. In common parlance, it signifies one who is in the possession of an office, as, the present incumbent.

INCUMBRANCE. Whatever is a lien upon an estate.

2. The right of a third person in the land in question to the diminution of the value of the land, though consistent

with the passing of the fee by the deed of conveyance, is an incumbrance; as, a public highway over the land. 1 Appl. R. 313; 2 Mass. 97; 10 Conn. 431. A private right of way. 15 Pick. 68; 5 Conn. 497. A claim of dower. 22 Pick. 477; 2 Greenl. 22. Alien by judgment or mortgage. 5 Greenl. 94; 15 Verm. 683. Or any outstanding, elder, and better title, will be considered as incumbrances, although in strictness some of them are rather estates than incumbrances. 4 Mass. 630; 2 Greenl. 22; 22 Pick. 447; 5 Conn. 497; 8 Pick. 346; 15 Pick. 68; 13 John. 105; 5 Greenl. 94; 2 N. H. Rep. 458; 11 S. & R. 109; 4 Halst. 139; 7 Halst. 261; Verm. 676; 2 Greenl. Ev. _242.

3. In cases of sales of real estate, the vendor is required to disclose the incumbrances, and to deliver to the purchaser the instruments by which they were created, or on which the defects arise; and the neglect of this will be considered as a fraud. Sugd. Vend, 6; 1 Ves. 96; and see 6 Ves. jr. 193; 10 Ves. jr. 470; 1 Sch. & Lef. 227; 7 Serg. & Rawle, 73.

4. Whether the tenant for life, or the remainder−man, is to keep. down the interest on incumbrances, see Turn. R. 174; 3 Mer. R. 566; 6 Ves. 99; 4 Ves. 24. See, generally, 14 Vin. Ab. 352; Com. Dig. Chancery, 4 A 10, 4 I. 3; 9 Watts, R. 162.

INDEBITATUS ASSUMPSIT, remedies, pleadings. That species of action of assumpsit, in which the plaintiff alleges in his declaration, first a debt, and then a promise in consideration of the debt, that the defendant, being indebted, he promised the plaintiff to pay him. The promise so laid is, generally, an implied one only. Vide 1 Chit. Pl. 334; Steph. Pl. 318; Yelv. 21; 4 Co. 92 b. For the history of this form of action, see 3 Reeves' Hist. Com. Law; 2 Comyn on Contr. 549 to 556; 1 H. Bl. 550, 551; 3 Black Com. 154; Yelv. 70. Vide Pactum Constituae Pecuniae.

INDEBITI SOLUTIO, civil law. The payment to one of what is not due to him. If the payment was made by mistake, the civilians recovered it back by an action called condictio indebiti; with us, such money may be recovered by an action of assumpsit.

INDEBTEDNESS. The state, of being in debt, without regard to the ability or inability of the party to pay the same. See 1 Story, Eq. 343; 2 Hill. Ab. 421.

2. But in order to create an indebtedness, there must be an actual liability at the time, either to pay then or at a future time. If, for example, a person were to enter and become surety for another, who enters into a rule of reference, he does not thereby become a debtor to the opposite party until the rendition of the judgment on the award. 1 Mass. 134. See Creditor; Debt; Debtor.

INDECENCY. An act against good behaviour and a just delicacy. 2 Serg. & R. 91.

2. The law, in general, will repress indecency as being contrary to good morals, but, when the public good requires it, the mere indecency of disclosures does not suffice to exclude them from being given in evidence. 3 Bouv. Inst. n. 3216.

3. The following are examples of indecency: the exposure by a man of his naked person on a balcony, to public view, or bathing in public; 2 Campb. 89; or the exhibition of bawdy pictures. 2 Chit. Cr. Law, 42; 2 Serg. & Rawle, 91. This indecency is punishable by indictment. Vide 1 Sid. 168; S. C. 1 Keb. 620; 2 Yerg. R. 482, 589; 1 Mass. Rep. 8; 2 Chan. Cas. 110; 1 Russ. Cr. 302; 1 Hawk. P. C. c. 5, s. 4; 4 Bl. Com. 65, n.; 1 East, P. C. c. 1, s. 1; Burn's Just. Lewdness.

INDEFEASIBLE. That which cannot be defeated or undone. This epithet is usually applied to an estate or right which cannot be defeated.

INDEFENSUS. One sued or impleaded, who refuses or has nothing to answer.

INDEFINITE. That which is undefined; uncertain.

INDEFINITE FAILURE OF ISSUE, executory devise. A general failure of issue, whenever it may happen, without fixing a time, or certain or definite period, within which it must take place. The issue of the first taker must be extinct, and the issue of the issue ad infinitum, without regard to the time or any particular event. 2. Bouv. Inst. n. 1849.

INDEFINITE, NUMBER. A number which may be increased or diminished at pleasure.

2. When a corporation is composed of an indefinite number of persons, any number of them consisting of a majority of those present may do any act unless it be otherwise regulated by the charter or by−laws. See Definite number.

INDEFINITE PAYMENT, contracts. That which a debtor who owes several debts to a creditor, makes without making an appropriation; (q. v.) in that case the creditor has a right to make such appropriation.

INDEMNITY. That which is given to a person to prevent his suffering damage. 2 McCord, 279. Sometimes it signifies diminution; a tenant who has been interrupted in the enjoyment of his lease may require an indemnity

from the lessor, that is, a reduction of his rent.

2. It is a rule established in all just governments that, when private property is required for public, use, indemnity shall be given by the public to the owner. This is the case in the United States. See Code Civil, art. 545. See Damnification.

3. Contracts made for the purpose of indemnifying a person for doing an act for which he could be indicted, or an agreement to, compensate a public officer for doing an act which is forbidden by law, or omitting to do one which the law commands, are absolutely void. But when the agreement with an officer was not to induce him to neglect his duty, but to test a legal right, as to indemnify him for not executing an execution, it was held to be good. 1 Bouv. Inst. n. 780.

INDENTURE, conveyancing. An instrument of writing containing a conveyance or contract between two or more persons, usually indented or cut unevenly, or in and out, on the top or, side.

2. Formerly it was common to make two instruments exactly alike, and it was then usual to write both on the same parchment, with some words or letters written between them, through which the parchment was cut, either in a straight or indented line, in such a manner as to leave one−half of the word on one part, and half on the other. The instrument usually commences with these words, "This indenture," which were not formerly sufficient, unless the parchment or paper was actually indented to make an indenture 5 Co. 20; but now, if the form of indenting the parchment be wanting, it may be supplied by being done in court, this being mere form. Besides, it would be exceedingly difficult with even the most perfect instruments, to out parchment or paper without indenting it. Vide Bac. Ab. Leases, &c. E 2; Com. Dig. Fait, C, and note d; Litt. sec. 370; Co. Litt. 143 b, 229 a; Cruise, Dig t. 32, c. 1, s. 24; 2 Bl. Com. 294; 1 Sess. Cas. 222.

INDEPENDENCE. A state of perfect irresponsibility to any superior; the United States are free and independent of all earthly power.

2. Independence may be divided into political and natural independence. By the former is to be understood that we have contracted no tie except those which flow from the three great natural rights of safety, liberty and property. The latter consists in the power of being able to enjoy a permanent well−being, whatever may be the disposition of those from whom we call ourselves independent. In that sense a nation may be independent with regard to most people, but not independent of the whole world. Vide on of Independence.

INDEPENDENT CONTRACT. One in which the mutual acts or promises have no relation to each other, either as equivalents or considerations. Civil Code of Lo. art. 1762; 1 Bouv. Inst. n. 699.

INDETERMINATE. That which is uncertain or not particularly designated; as, if I sell you one hundred bushels of wheat, without stating what wheat. 1 Bouv. Inst. n. 950.

INDIAN TRIBE. A separate and distinct community or body of the aboriginal Indian race of men found in the United States.

2. Such a tribe, situated within the boundaries of a state, and exercising the powers of government and, sovereignty, under the national government, is deemed politically a state; that is, a distinct political society, capable of self−government; but it is not deemed a foreign state, in the sense of the constitution. It is rather a domestic dependent nation. Such a tribe may properly be deemed in a state of pupilage and its relation to the United States resembles that of a ward to a guardian. 5 Pet. R. 1, 16, 17; 20 John. R. 193; 3 Kent, Com. 308 to 318; Story on Const. _1096; 4 How. U. S. 567; 1 McLean, 254; 6 Hill, 546; 8 Ala. R. 48.

INDIANS. The aborigines of this country are so called.

2. In general, Indians have no political rights in the United States; they cannot vote at the general elections for officers, nor hold office. In New York they are considered as citizens and not as aliens, owing allegiance to the government and entitled to its protection. 20 John. 188, 633. But it was ruled that the Cherokee nation in Georgia was a distinct community. 6 Pet. 515. See 8 Cowen, 189; 9 Wheat. 673; 14 John. 181, 332 18 John. 506.

INDIANA. The name of one of the new states of the United States. This state was admitted into the Union by virtue of the "Resolution for admitting the state of Indiana into the Union," approved December 11, 1816, in the following words: Whereas, in pursuance of an act of congress, passed on the nineteenth day of April, one thousand eight hundred and sixteen, entitled "An act to enable the people of the Indiana territory to from a constitution and state government, and for the admission of that state into the Union," the people of the said territory did, on the twenty−ninth day of June, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, which constitution and state government, so formed, is republican, and in conformity with the principles of the articles of compact between the original states and the people and states in

the territory north−west of the river Ohio, passed on the thirteenth day of July, one thousand seven hundred and eighty−seven.

2. Resolved, That the state of Indiana shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever.

3. The first constitution of the state was adopted in the −year eighteen hundred and sixteen, and has since been superseded by the present constitution, which was adopted in the year eighteen hundred and fifty−one. The powers of the government are divided into three distinct departments, and each of them is confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, including the administrative, to another; and those which are judicial to a third. Art. III.

4. − 1st. The legislative authority of the state is vested in a general assembly, which consists of a senate and house of representatives, both elected by the people.

5. The senate is composed of a number of persons who shall not exceed fifty. Art. 2. The number shall be fixed by law. Art. IV. 6. A senator shall 1. Have attained the age of twenty−five years. 2. Be a citizen of the United States. 3. Have resided, next preceding his election, two years in this state, the last twelve months of which must have been in the county or district in which he may be elected. Senators shall be elected for the term of four years, and one−half as nearly as possible shall be elected every two years.

6. − 2. The number of representatives is to be fixed by law. It shall never exceed one hundred members. Art. IV. s. 2, 5.

7. To be qualified for a representative, a person must, 1. Have attained the age of twenty−one year's. 2. Be a Citizen, of the United States. 3. Have been for two years next preceding his election an inhabitant of this state, and for one year next proceding his election, an inhabiant of the county or district whence he may be chosen. Art. IV. s. 7. Representatives are elected for the term of two years from the day next after their general election. Art. IV. s. 3. And they shall be chosen by the respective electors of the counties. Art. IV. s. 2. .

8. − 2d, The exeutive power of this state is vested in a governor. And, under certain circumstances, this power is exercised by the lieutenant−governor.

9. − 1. The governor is elected at the time and place of choosing members of the general assembly. Art. V. s. 3. The person having the highest number of votes for governor shall be elected; but, in case to or more persons shall have an equal and the highest number of votes for the office, the general assembly shall, by joint vote, forthwith proceed to elect one of the said persons governor. He shall hold his office during four years, and is not eligible more than four years in any period of eight years. The official term of the governor shall commence on the second Monday of January, in the year one thousand eight hundred and fifty−three, and on the same day every fourth year thereafter. His requisite quali− fications are, that he shall, 1. Have been a citizen of the United States for five years. 2. Be at least thirty years of age. 3. Have resided in the state five years next preceding his election. 4. Not hold any office under the United States, or this state. He is commander−in−chief of the army and navy of the state, when not in the service of the United States, and may call out such forces, to execute the laws, to suppress insurrection, or to repel invasion. He shall have the power to remit fines and forfeitures; grant reprieves and pardons, except treason and cases of impeachments; and to require information from executive officers. When, during a recess of the general assembly, a vacancy shall happen in any office, the appointment of which is vested in the general assembly, or when at any time a vacancy shall have happened in any other state office, or in the office of judge of any court, the governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualifled. He shall take care that the laws be faithfully executed. Should the seat of government become dangerous, from disease or at common enemy, he may convene the general assembly at any other place. He is also invsted with the veto power. Art. V.

10. − 2. The lieutenant−governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant−governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant−governor. He shall, by virtue of his office, be president of the senate; have a right, when in committee of the whole, to debate and vote on all subjects, and when the senate are equally divided, to give the casting vote. In case of the removal of the governor from office, death, resignation, or inability to discharge the duties of the office, the lieutenant−governor shall exercise all the powers and authority appertaining to the office of governor. Whenever the government shall be administered by the lieutenant−governor, or he shall be unable to attend as president of the senate, the senate shall elect one of their own members as president for that occasion. And the general assembly shall, by law,

provide for the case of removal from office, death, resignation, or inability, both of the governor and lieutenant−governor, declaring what office r shall then act as governor; and such officer shall act accordingly, until the disability be removed, or a governor be elected. The lieutenant−governor, while he acts as president of the senate, shall receive for his services the same compensation as the speaker of the house of representatives. The lieutenant−governor shall not be eligible to any other office during the term for which he shall have been elected.

11. − 3. The judicial power of the state is vested by article VII of the Constitution as follows:

_1. The judicial power of this state shall be vested in a supreme court, in circuit courts, and in such other inferior courts as the general assembly may direct and establish.

12. − _2. The supreme court shall consist of not less than three nor more than five judges, a majority of whom form a quorum, which shall have jurisdiction co−extensive with the limits of the state, in appeals and writs of error, under such regulations and restrictions as may be prescribed by law, shall also have such original jurisdiction as the general assembly may confer. And upon the decision of every case, shall give a statement, in writing, of each question arising in the record of such case, and the decision of the court thereon.

13. − _3. The circuit courts shall each consist of one judge. The state shall, from time to time, be divided into judicial circuits. They shall have such civil and criminal jurisdiction as may be prescribed by law. The general assembly may provide by law, that the judge of one circuit may hold the court of another circuit in case of necessity or convenience; and in case of temporary inability of any judge, from sickness or other cause, to hold the courts in his circuit, provision shall be made by law for holding such courts.

14. − _4. Tribunals of conciliation may be established with such powers and duties as shall be prescribed by law; or the powers and duties of the same may be conferred on other courts of justice; but such tribunals or other courts when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference, and agree to abide the judgment of such tribunal or court.

15. − _5. The judges of the supreme court, the circuit and other inferior courts, shall hold their offices during the term of six years, if they shall so long behave well, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

16. − _6. All judicial officers shall be conservators of the peace in their respective jurisdiction.

17. − _7. The state shall be divided into as many districts as there ate judges of the supreme court; and such districts shall be formed of contiguous territory, as nearly equal in population, as without dividing a county the same can be made. One of said judges shall be elected from each district, and reside therein; but said judges shall be elected by the electors of the state at large.

18. − _8. There shall be elected by the voters of the state, a clerk of the supreme court, who shall hold his office four years, and whose duties shall be prescribed by law.

19. − _9. There shall be elected in each judicial circuit by the voters thereof, a prosecuting attorney, who shall hold his office for two years.

20. − _10. A competent number of justices of the peace shall be elected by the qualified electors in each township in the several counties, and shall continue in office four years, and their powers and duties shall be prescribed by law.

21. − _11. Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice.

INDICIA, civil law. Signs, marks. Example: in replevin, the chattel must possess indicia, or earmarks, by which it can be distinguished from all others of the same description. 4 Bouv. Inst. n. 3556. This term is very nearly synonymous with the common law phrase, "circumstantial evidence." It was used to designate the facts giving rise to the indirect inference, rather than the inference itself; as, for example, the possession of goods recently stolen, vicinity to the scene of the crime, sudden change in circumstances or conduct, &c. Mascardus, de Prob. lib. 1, quaest. 15; Dall. Dict. Compet,nce Criminelle, 92, 415; Morin, Dict. du Droit Criminal, mots Accusation, Chambre du Conseil.

2. Indicia may be defined to be conjectures, which result from circumstances not absolutely necessary and certain, but merely probable, and which may turn out not to be true, though they have the appearance of truth. Denisart, mot Indices. See Best on Pres. 13, note f.

3. However numerous indicia may be, they only show that a thing may be, not that it has been. An indicium, can have effect only when a connexion is essentially necessary with the principal. Effects are known by their causes, but only when the effects can arise only from the causes to which they. are attributed. When several causes may

have produced one and the same effect, it is, therefore, unreasonable to attribute it to any one of such causes. A combination of circumstances sometimes conspire against an innocent person, and, like mute witnesses, depose against him. There is danger in such cases, that a jury may be misled; their minds prejudiced, their indignation unduly excited, or their zeal seduced. Under impressions thus produced, they may forget their true relation to the accused, and condemn a man whom they would have acquitted had they required that proof and certainty which the law demands. See D'Aguesseau, Oeuvres, vol. xiii. p. 243. See Circumstances.

INDICTED, practice. When a man is accused by a bill of indictment preferred by a grand jury, he is said to be indicted.

INDICTION, computation of time. An indiction contained a space of fifteen years.

2. It was used in dating at Rome and in England. It began at the dismission of the Nicene council, A. D. 312. The first year was reckoned the first of the first indiction, the second, the third, &c., till fifteen years afterwards. The sixteenth year was the first year of the second indiction, the thirty−first year was the first ar of the third indiction, &c.

INDICTMENT, crim. law, practice. A written accusation of one or more persons of a crime or misdemeanor, presented to, and preferred upon oath or affirmation, by a grand jury legally convoked. 4 Bl. Com. 299; Co. Litt. 126; 2 Hale, 152; Bac. Ab. h. t.; Com. Dig. h. t. A; 1 Chit. Cr. L. 168.

2. This word, indictment, is said to be derived from the old French word inditer, which signifies to indicate; to show, or point out. Its object is to indicate the offence charged against the accused. Rey, des Inst. l'Angl. tome 2, p. 347.

3. To render an indictment valid, there are certain essential and formal requisites. The essential requisites are, 1st. That the indictment be presented to some court having jurisdiction. of the offence stated therein. 2d. That it appear to have been found by the grand jury of the proper county or district. 3d. That the indictment be found a true bill, and signed by the foreman of the grand jury. 4th. That it be framed with sufficient certainty; for this purpose the charge must contain a certain description of the crime or misdemeanor, of which the defendant is accused, and a statement of the facts by which it is constituted, so as to identify the accusation. Cowp. 682, 3; 2 Hale, 167; 1 Binn. R. 201; 3 Binn. R; 533; 1 P. A. Bro. R. 360; 6 S. & R. 398 4 Serg. & Rawle, 194; 4 Bl. Com. 301; Yeates, R. 407; 4 Cranch, R. 167. 5th. The indictment must be in the English language. But if any document in a foreign language, as a libel, be necessarily introduced, it should be set out in the original tongue, and then translated, showing its application. 6 T. R. 162.

4. Secondly, formal requisites are, 1st. The venue, which, at common law should always be laid in the county where the offence has been committed, although the charge is in its nature transitory, as a battery. Hawk. B. 2, c. 25, s. 35. The venue is stated in the margin thus, "City and county of _____ to wit." 2d. The presentment, which must be in the present tense, and is usually expressed by the following formula, "the grand inquest of the commonwealth of _____ inquiring for the city and county aforesaid, upon their oaths and affirmations present." See, as to the venue, 1 Pike, R. 171; 9 Yerg. 357. 3d. The name and addition of the defendant; but in case an error has been made in this respect, it is cured by the plea of the defendant. Bac. Ab. Misnomer, B; Indictment, G 2; 2 Hale, 175; 1 Chit. Pr. 202. 4th. The names of third persons, when they must be necessarily mentioned in the indictment, should be stated with certainty to a common intent, so as sufficiently to inform the defendant who are his accusers. When, however, the names of third persons cannot be ascertained, it is sufficient, in some cases, to state " a certain person or persons to the jurors aforesaid unknown." Hawk. B. 2, c. 25, s. 71; 2 East, P. C. 651, 781; 2 Hale, 181; Plowd. 85; Dyer, 97, 286; 8 C. & P. 773. See Unknown. 5th. The time when the offence was committed, should in general be stated to be on a specific year and day. In some offences, as in perjury, the day must be precisely stated; 2 Wash. C. C. Rep. 328; but although it is necessary that a day certain should be laid in the indictment, yet, in general, the prosecutor may give evidence of an offence committed on any other day previous to the finding of the, indictment. 5 Serg. & Rawle, 316. Vide 11 Serg. & Rawle, 177; 1 Chit. Cr. Law, 217, 224; 1 Ch. Pl. Index, tit. Time. See 17 Wend. 475; 2 Dev. 567; 5 How. Mis. 14; 4 Dana. 496; C. & N. 369; 1 Hawks, 460. 6th. The offence should be properly described. This is done by stating the substantial circumstances necessary to show the nature of the crime and, next, the formal allegations and terms of art required by law. 1. As to the substantial circumstances. The whole of the facts of the case necessary to make it appear judicially to the court that the indictors have gone upon sufficient premises, should be set forth; but there should be no unnecessary matter or any thing which on its face makes the indictment repugnant, inconsistent, or absurd. Hale, 183; Hawk. B. 2, c. 25, s. 57; Ab. h. t. G 1; Com. Dig. h. t. G 3; 2 Leach, 660; 2 Str. 1226. All indictments ought to charge a

man with a particular offence, and not with being an offender in general: to this rule there are some exceptions, as indictments against a common barrator, a common scold, and the keeper of a common bawdy house; such persons may be indicted by these general words. 1 Chit. Cr. Law, 230, and the authorities there cited. The offence must not be stated in the disjunctive, so as to leave it uncertain on what it is intended to rely as an accusation; as, that the defendant erected or caused to be. erected a nuisance. 2 Str. 900; 1 Chit. Cr. Law, 236.

2. There are certain terms of art used, so appropriated by the law to express the precise idea which it entertains of the offence, that no other terms, however synonymous they may seem, are capable of filling the same office: such, for example, as traitorously, (q. v.) in treason; feloniously, (q. v.) in felony; burglariously, (q. v.) in burglary; maim, (q. v.) in mayhem, &c. 7th. The conclusion of the indictment should conform to the provision of the constitution of the state on the subject, where there is such provision; as in Pennsylvania, Const. art. V., s. 11, which provides, that " all prosecutions shall be carried on in the name and by the authority of the commonwealth of Pennsylvania, and conclude against the peace and dignity of the same." As to the necessity and propriety of having several counts in an indictment, vide 1 Chit. Cr. Law, 248; as to. joinder of several offences in the same indictment, vide 1 Chit. Cr. Law, 253; Arch. Cr. Pl. 60; several defendants may in some cases be joined in the same indictment. Id. 255; Arch. Cr. Pl. 59. When an indictment may be amended, see Id. 297 .Stark. Cr. Pl. 286; or quashed, Id. 298 Stark. Cr. Pl. 831; Arch. Cr. 66. Vide; generally, Arch. Cr. Pl. B. 1, part 1, c. 1; p. 1 to 68; Stark. Cr. Pl. 1 to 336; 1 Chit. Cr. Law, 168 to 304; Com. Dig. h. t.: Vin. Ab. h. t.; Bac. Ab. h. t.; Dane's Ab. h. t.; Nels. Ab. h. t.; Burn's Just. h. t.; Russ. on Cr. Index, h. t.,

5. By the Constitution of the United States, Amendm. art. 5, no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war, or public danger.

INDICTOR. He who causes another to be indicted. The latter is sometimes called the indictee.

INDIFFERENT. To have no bias nor partiality. 7 Conn. 229. A juror, an arbitrator, and a witness, ought to be indifferent, and when they are not so, they may be challenged. See 9 Conn. 42.

INDIRECT EVIDENCE. That proof which does not prove the fact in question, but proves another, the certainty of which may lead to the discovery of the truth of the one sought.

INDIVISIBLE. That which cannot be separated.

2. It is important to ascertain when a consideration or a contract, is or is not indivisible. When a consideration is entire and indivisible, and it is against law, the contract is void in toto. 11 Verm. 592; 2 W. & S. 235. When the consideration is divisible, and part of it is illegal, the contract is void only pro tanto.

3. − To ascertain whether a contract is divisible or indivisible, id to ascertain whether it may or may not be enforced, in part, or paid in part, without the consent of the other party. See 1 Bouv. Inst. n. 694, and articles Divisible; Entire.

INDIVISUM. That which two or more persons hold in common without partition; undivided. (q. v.)

TO INDORSE. To write on the back. Bills of exchange and promissory notes are indorsed by the party writing his name on the back; writing one's name on the back of a writ, is to indorse such writ. 7 Pick. 117. See 13 Mass. 396.

INDORSEE, contracts. The person in whose favor an indorsement is made,

2. He is entitled to all the rights of the indorser, and, if the bill or note have been indorsed over to him before it became due, he may be entitled to greater rights than the payee and indorser would have had, had he retained it till it became due, as none of the parties can make a set−off, or inquire into the consideration of the bill which he then holds. If he continues to be the holder (q. v.) when the bill becomes due, he ought to make a legal demand, and give notice in case of non−acceptance or non−payment. Chitty on Bills, passim.

INDORSEMENT, crin. law, practice. When a warrant for the arrest of a person charged with a crime has been issued by a justice of the peace of one county, which is to be executed in another county, it is necessary in some states, as in Pennsylvania, that it should be indorsed by a justice of the county where it is to be executed: this indorsement is called backing. (q. v.)

INDORSEMENT, contracts. In its most general acceptation, it is what is written on the back of an instrument of writing, and which has relation to it; as, for example, a receipt or acquittance on a bond; an assignment on a promissory note.

2. Writing one's name on the back of a bill of exchange, or a promissory note payable to order, is what is usually called, an indorsement. It will be convenient to consider, 1. The form of an indorsement; and, 2. Its effect.

3. − 1. An indorsement is in full, or in blank. In full, when mention is made of the name of the indorsee; and in blank, when the name of the indorsee is not mentioned. Chitty on Bills, 170; 13 Serg. & Rawle, 315. A blank indorsement is made by writing the name of the indorser on the back; a writing or assignment on the face of the note or bill would, however, be considered to have the force and effect of an indorsement. 16 East, R. 12. when an indorsement has been made in blank any after attempt to restrain the negotiability of the bill will be unavailing. 1 E.N. P. C. 180; 1 Bl. Rep. 295; Ham. on Parties 104.

4. Indorsements may also be restrictive conditional, or qualified. A restrictive indorsement may restrain the negotiability of a bill, by using express words to that effect, as by indorsing it "payable to J. S. only," or by using other words clearly demonstrating his intention to do so. Dougl. 637. The indorser may also make his indorsement conditional, and if the condition be not performed, it will be invalid. 4 Taunt. Rep. 30. A qualified indorsement is one which passes the property in the bill to the indorsee, but is made without responsibility to the indorser; 7 Taunt. R. 160; the words commonly used are, sans recours, without recourse. Chit. on Bills, 179; 3 Mass. 225; 12 Mass. 14, 15.

5. − 2. The effects of a regular indorsement may be considered, 1. As between the indorser and the indorsee. 2. Between the indorser and the acceptor. And, 3. Between the indorser and future parties to the bill.

6. − 1. An indorsment is sometimes an original engagement;as, when a man draws a bill payable to his own order, and indorses it; mostly, however, it operates as an assignment, as when the bill is perfect, and the payee indorses it over to a third person. As an assignment, it carries with it all the rights which the indorsee had, with a guaranty of the solvency of the debtor. This guaranty is, nevertheless, upon condition that the holder will use due diligence in making a demand of payment from the acceptor, and give notice of non−acceptance or non−payment. 13 Serg. Rawle, 311.

7.−2. As between the indorsee and the acceptor, the indorsement has the effect of giving to the former all the rights which the indorser had against the acceptor, and all other parties liable on the bill, and it is unnecessary that the acceptor or other party should signify his consent or knowledge of the indorsement; and if made before the bill is paid, it conveys all these rights without any set−off, as between the antecedent parties. Being thus fully invested with all the rights in the bill, the indorsee may himself indorse it to another when he becomes responsible to all future patties as an indorser, as the others were to him.

8. − 3. The indorser becomes responsible by that act to all persons who may afterwards become party to the bill.

Vide Chitty on Bills, ch. 4; 3 Kent, Com. 58; Vin. Abr. Indorsement; Com. Dig. Fait, E 2; 13 Serg. & Rawle, 311; Merl. R,pert. mot Endossement Pard. Droit Com. 344−357; 7 Verm. 356; 2 Dana, R. 90; 3 Dana, R. 407; 8 Wend. 600; 4 Verm. 11; 5 Harr. & John. 115; Bouv. Inst. Index, h. t.

INDORSER, contracts. The person who makes an indorsement.

2. The indorser of a bill of exchange, or other negotiable paper, by his indorsement undertakes to be responsible to the holder for the amount of the bill or note, if the latter shall make a legal demand from the payer, and, in default of payment, give proper notice thereof to the indorser. But the indorser may make his indorsement conditional, which will operate as a transfer of the bill, if the condition be performed; or he may make it qualified, so that he shall not be responsible on non−payment by the payer. Chitty on Bills, 179,180.

3. To make an indorser liable on his indorsement, the instrument must be commercial paper, for the indorsement of a bond or single bill.will not, per se, create a responsibility. 13 Serg. & Rawle, 311. But see Treval v. Fitch, 5 Whart. 325; Hopkins v. Cumberland Valley R. R. Co., 3 Watts & Serg. 410.

4. When there are several indorsers, the. first in point of time is generally, but not always, first−responsible; there may be circumstances which may cast the responsibility, in the first place, as between them, on a subsequent indorsee. 5 Munf. R. 252.

INDUCEMENT, pleading. The statement of matter which is introductory to the principal subject of the declaration or plea, &c., but which is necessary to explain and elucidate it; such matter as is not introductory to or necessary to elucidate the substance or gist of the declaration or plea, &c. nor is collaterally applicable to it, not being inducement but surplusage. Inducement or conveyance, which. are synonymous terms, is in the nature of a preamble to an act of assembly, and leads to the Principal subject of the declaration or plea, &c. the same as that does to the purview or providing clause of the act. For instance, in an action for a nuisance to property in the possession of the plaintiff, the circumstance of his being possessed of the property should be stated as inducement, or byway of introduction to the mention of the nuisance. Lawes, Pl. 66, 67; 1 Chit. Pl. 292; Steph. Pl. 257; 14 Vin. Ab. 405; 20 Id. 845; Bac. Ab. Pleas. &c. I 2.

INDUCEMENT, contracts, evidence. The moving cause of an action.

2. In contracts, the benefit.which the obligor is to receive is the inducement to making them. Vide Cause; Consideration.

3. When a person is charged with a crime, he is sometimes induced to make confessions by the flattery of hope, or the torture of fear. When such confessions are made in consequence of promises or threats by a person in authority, they cannot be received in evidence. In England a distinction has been made between temporal and spiritual inducements; confessions made under the former are not receivable in evidence, while the latter may be admitted. Joy on Conf. ss. 1 and 4.

INDUCLAE LEGALES, Scotch law. The days between the citation of the defendant, and the day of appearance. Bell's Scotch Law Dict. h. t. The days between the test and the return day of the writ.

INDUCTION, eccles. law. The giving a clerk, instituted to a benefice, the actual possession of its temporalties, in the nature of livery of seisin. Ayl. Parerg. 299.

INDUTLGENCE. A favor granted.

2. It is a general rule that where a creditor gives .indulgence, by entering into a binding contract with a principal debtor, by which the surety is or may be damnified, such surety is discharged, because the creditor has put it out of his power to enforce immediate payment; when the surety would have a right to require him to do so. 6 Dow, P. C. 238; 3 Meriv. 272; Bac. Ab. Oblig. D; and see Giving Time.

3. But mere inaction by the creditor, if he do not deprive himself of the right to sue the principal, does not in general discharge the surety. See Forbearance.

INELIGIBILITY. The incapacity to be lawfully elected.

2. This incapacity arises from various, causes, and a person may be incapable of being elected to one office who may, be elected to another; the incapacity may also be perpetual or temporary.

3. − 1. Among perpetual inabilities may be reckoned, 1. The inability of women to be elected to a public office. 2. Of citizens born in a foreign country to be elected president of the United States.

4. − 2. Among the temporary inabilities may be mentioned, 1. The holding of an office declared by law to be incompatible with the one sought. 2. The non−payment of the taxes required by law. 3. The want of certain property qualifications required by the constitution. 4. The want of age, or being over the age required. Vide Eligibility. Incompatibility.

INEVITABLE ACCIDENT. A term used in the civil law, nearly synonymous with fortuitous. event. (q. v.) 2 Sm. & Marsh. 572. In the common law commonly called the ad of God. (q. v.) 2 Smed. & Marsh. Err. & App. 572.

INFAMIS. Among the Romans was of a general rule, and not by virtue of an arbitrary decision of the censors, lost his political rights, but preserved his civil rights. Sav. Dr. Rom _79.

INFAMY, crim. law, evidence. That state which is produced by the conviction of crime and the loss of honor, which renders the infamous person incompetent as a witness.

2. It is to be considered, 1st. What crimes or punishment incapacitate a witness. 2d. How the guilt is to be proved. 3d. How the objection answered. 4th. The effect of infamy.

3. − 1. When a man is convicted of an offence which is inconsistent with the common principles of honesty and humanity, the law considers his oath to be of no weight, and excludes his testimony as of too doubtful and suspicious a nature to be admitted in a court of justice to deprive another of life, liberty or property. Gilb. L. E. 256; 2 Bulst. 154; 1 Phil. 23; Bull. N. P. 291. The crimes which render a person incompetent, are treason; 5 Mod. 16, 74; felony; 2 Bulst. 154; Co. Litt. 6; T. Raym. 369; all offences founded in fraud, and which come within the general. notion of the crimen falsi of the Roman law; Leach, 496; as perjury and forgery; Co. Litt. 6; Fort. 209; piracy 2 Roll. Ab. 886; swindling, cheating; Fort. 209; barratry; 2 Salk. 690; and the bribing a witness to absent himself from a trial, in order to get rid of his evidence. Fort. 208. It is the crime and not the punisshment which renders the offender unworthy of belief. 1 Phill. Ev. 25.

4. − 2. In order to incapacitate the party, the judgment must be proved as pronounced by a court possessing competent jurisdiction. 1 Sid. 51; 2 Stark. C. 183; Stark. Ev. part 2, p. 144, note 1; Id. part 4, p. 716. But it has been held that a conviction of an infamous crime in another country, or another of the United States, does not render the witness incompetent on the ground of infamy. 17 Mass. 515. Though this doctrine appears to be at variance with the opinions entertained by foreign jurists, who maintain that the state or condition of a person in the place of his domicil accompanies him everywhere. Story, Confl. _620, and the authorities there cited; Foelix,

Trait, De Droit Intern. Priv,, 31; Merl. R,pert, mot Loi, _6, n. 6.

5. − 3. The objection to competency may be answered, 1st. By proof of pardon. See Pardon. And, 2d. By proof of a reversal by writ of error, which must be proved by the production of the record.

6. − 4. The judgment for an infamous crime, even for perjury, does not preclude the party from making an affidavit with a view to his own defence. 2 Salk. 461 2 Str. 1148; Martin's Rep. 45. He may, for instance, make an affidavit in relation to the irregularity of a judgment in a cause in which he, is a party, for otherwise he would be without a remedy. But the rule is confined to defence, and he cannot be heard upon oath as complainant. 2 Salk. 461 2 Str. 1148. When the witness becomes incompetent from infamy of character, the effect is the same as if he were dead and if he has attested any instrument as a witness, previous to his conviction, evidence may be given of his handwriting. 2 Str. 833; Stark. Ev. part. 2, sect. 193; Id. part 4, p. 723.

7. By infamy is also understood the expressed opinion of men generally as to the vices of another. Wolff, Dr. de la Nat. et des Gens, _148.

INFANCY. The state or condition of a person under tho age of twenty−one years. Vide Infant.

INFANT, persons. One under the age of twenty−one years. Co. Litt. 171.

2. But he is reputed to be twenty−one years old, or of full age, the first instant of the last day of the twenty−first year next before the anniversary of his birth; because, according to the civil computation of time, which differs from the natural computation, the last day having commenced, it is considered as ended. Savig. Dr. Rom. _182. If, for example, a person were born at any hour of the first day of January, 1810, (even a few minutes before twelve o'clock of the night of that day,) he would be of full age at the first instant of the thirty−first of December, 1831, although nearly forty−eight hours before he had actually attained the full age of twenty−one years, according to years, days, hours and minutes, because there is, in this case, no fraction of a day. 1 Sid. 162; S. C. 1 Keb. 589; 1 Salk. 44; Raym. 84; 1 Bl. Com. 463, 464, note 13, by Chitty; 1 Lilly's, Reg. 57; Com. Dig. Enfant, A; Savig. Dr. Rom. __ 383, 384.

3. A curious case occurred in England of a young lady who was born after the house clock had struck, while the parish clock was striking, and before St. Paul's had begun to strike twelve on the night of the fourth and fifth of January, 1805, and the question was whether she was born on the fourth or fifth of January. Mr. Coventry gives it as his opinion that she was born on the fourth, because the house clock does not regulate anything but domestic affairs, that the parochial clock is much better evidence, and that a metropolitan clock ought to be received with "implicit acquiescence." Cov. on Conv. Ev. 182−3. It is conceived that this can only be prima facie, because, if the fact were otherwise, and the parochial and metropolitan clocks should both have been wrong, they would undoubtedly have had no effect in ascertaining the age of the child.

4. The sex makes no difference, a woman is therefore an infant until she has attained her age of twenty−one years. Co. Litt. 171. Before arriving at full infant may do many acts. A male at fourteen is of discretion, and may consent to marry; and at that age he may disagree to and annul a marriage he may before that time have contracted he may then choose a guardian and, if his discretion be proved, may, at common law, make a will of his personal estate; and may act as executor at the age of seventeen years. A female at seven may be betrothed or given in marriage; at nine she is entitled to dower; at twelve may consent or disagree to marriage; and, at common law, at seventeen may act as executrix.

5. Considerable changes of the common law have probably taken place in many of the states. In Pennsylvania, to act as an executor, the party must be of full age. In general, an infant is not bound by his contracts, unless to supply him for necessaries. Selw. N. P. 137; Chit. Contr. 31; Bac. Ab. Infancy, &c. I 3; 9 Vin. Ab. 391; 1 Com. Contr. 150,.151; 3 Rawle's R. 351; 8 T. R. 335; 1 Keb. 905, 913; S. C. 1 Sid. 258; 1 Lev. 168; 1 Sid. 129; 1 Southard's R. 87. Sed vide 6 Cranch, 226; 3 Pick. 492; 1 Nott & M'Cord, 197. Or, unless he is empowered to enter into a contract, by some legislative provision; as, with the consent of his parent or guardian to put himself apprentice, or to enlist in the service of the United States. 4 Binn. 487; 5 Binn. 423.

6. Contracts made with him, may be enforced or avoided by him on his coming of age. See Parties to contracts; Voidable. But to this general rule there is an exception; he cannot avoid contracts for necessaries, because these are for his benefit. See Necessaries. The privilege of avoiding a contract on account of infancy, is strictly personal to the infant, and no one can take advantage of it but himself. 3 Green, 343; 2 Brev. 438. When the contract has been performed, and it is such as he would be compellable by law to perform, it will be good and bind him. Co. Litt. 172 a. And all the acts of an infant, which do not touch his interest, but take effect from an authority which he has been trusted to execute, are binding. 3 Burr. 1794; Fonbl. Eq., b. 1, c. 2, _5, note c.

7. The protection which the law gives an infant is to operate as a shield to him, to protect him from improvident contracts, but not as a sword to do injury to others. An infant is therefore responsible for his torts, as, for slander, trespass, and the like; but he cannot be made responsible in an action ex delicto, where the cause arose on a contract. 3 Rawle's R. 351; 6 Watts' R. 9; 25 Wend. 399; 3 Shep. 233; 9 N. H. Rep. 441; 10 Verm. 71; 5 Hill, 391. But see contra, 6 Cranch, 226; 15 Mass. 359; 4 M'Cord, 387.

8. He is also punishable for a crime, if of sufficient discretion, or doli capax. 1 Russ. on Cr. 2, 3. Vide, generally, Bouv. Inst. Index, h. t.; Bingh. on Infancy; 1 Hare & Wall. Sel. Dec. 103, 122; the various Abridgments and Digests, tit. Enfant, Infancy; and articles Age; Birth; Capax Doli; Dead born; Faetus; In ventre sa mere.

INFANTICIDE, med. juris. The murder of a new born infant, Dalloz, Dict. Homicide, _4; Code Penal, 300. There is a difference between this offence and those known by the name of prolicide, (q. V.) and foeticide. (q. v.)

2. To commit infanticide the child must be wholly born; it is not. Sufficient that it was born so far as the head and breathed, if it died before it was wholly born. 5 Carr. & Payn. 329; 24 Eng. C. L. Rep. 344; S. C. 6 Carr: & Payn. 349; S. C. 25 Eng. C. L. Rep. 433.

3. When this crime is to be proved from circumstances, it is proper to consider whether the child had attained that size and maturity by which it would have been enabled to maintain an independent existence; whether it was born alive; and, if born alive, by what means it came to its death. 1 Beck's Med. Jur. 331 to 428, where these several questions are learnedly considered. See also 1 Briand, M,d L,g. pr,m. part. c. 8 Cooper's Med. Jur. h. t. Vide Ryan's Med. Jur. 137; Med. Jur. 145, 194; Dr. Cummin's Proof of Infanticide considered L,cieux, Considerations M,dico−l,gales sur l'Infanticide; Duvergie, M,dicine L,gale, art. Infanticide.

INFEOFFMENT, estates. The act or instrument of feoffment. (q. v.) In Scotland it is synonymous with saisine, meaning the instrument of possession; formerly it was synonymous with investiture, Bell's Sc. L. Dict. h. t.

INFERENCE. A conclusion drawn by reason from premises established by proof.

2. It is the province of the judge who is to decide upon the facts to draw the inference. When the facts are submitted to the court, the judges draw the inference; when they are to be ascertained by a jury, it is their duty to do so. The witness is not permitted as a general rule to draw an inference, and testify that to the court or jury. It is his duty to state the facts simply as they occurred. Inferences differ from presumptions. (q. v.)

INFERI0R. One who in relation to another has less power and is below him; one who is bound to obey another. He who makes the law is the superior; he who is bound to obey it, the inferior. 1 Bouv. Inst. n. 8.

INFERIOR COURTS. By this term are understood all courts except the supreme courts. An inferior court is a court of limited jurisdiction, and it must appear on the face of its proceedings tliat it has jurisdiction, or its proceedings. will be void. 3 Bouv. Inst. n. 2529.

INFIDEL, persons, evidence. One who does not believe in the existence of a God, who will reward or punish in this world or that which is to come. Willes' R. 550. This term has been very indefinitely applied. Under the name of infidel, Lord Coke comprises Jews and heathens; 2 Inst 506; 3 Inst. 165; and Hawkins includes among infidels, such as do not believe either in the Old or New Testament. Hawk. P. C. b 2, c. 46, s. 148.

2. It is now settled that when the witness believes in a God who will reward or punish him even in this world he is competent. See willes, R. 550. His belief may be proved from his previous declarations and avowed opinions; and when he has avowed himself to be an infidel, he may show a reform of his conduct, and change of his opinion since the declarations proved when the declarations have been made for a very considerable space of time, slight proof will suffice to show he has changed his opinion. There is some conflict in the cases on this subject, some of theni are here referred to: 18 John. R. 98; 1 Harper, R. 62; 4 N. Hamp. R. 444; 4 Day's Cas. 51; 2 Cowen, R. 431, 433 n., 572; 7 Conn. R. 66; 2 Tenn. R. 96; 4 Law Report, 268; Alis. Pr. Cr. Law, 438; 5 Mason, 16; 15 mass. 184; 1 Wright, 345; So. Car. Law Journ. 202. Vide Atheist; Future state.

INFIRM. Weak, feeble.

2. When a witness is infirm to an extent likely to destroy his life, or to prevent his attendauce at the trial, his testimony de bene esge may be taken at any age. 1 P. Will. 117; see Aged witness.; Going witness.

INFLUENCE. Authority, credit, ascendance.

2. Influence is proper or improper. Proper influence is that which one person gains over another by acts of kindness and, attention, and by correct conduct. 3 Serg. & Rawle, 269. Improper influence is that dominion acquired by any person over a mind of sanity for general purposes, and of sufficient soundness and discretion to regulate his affairs in general, which prevents the exercise of his di scretion, and destroys his free will. 1 Cox's Cas. 355. When the former is used to induce a testator to make a will, it will not vitiate it; but when the latter is

the moving cause, the will cannot stand. 1 Hagg. R. 581; 2 Hagg. 142; 5 Serg. & Rawle, 207; 13 Serg. & Rawle, 323; 4 Greenl. R. 220; 1 Paige, R. 171; 1 Dow. & Cl. 440; 1 Speers, 93.

3. A contract to use a party's influeuce to induce a person in authority to exercise his power in a particular way, is void, as being against public policy. 5 Watts & Serg. 315; 5 Penn. St. Rep. 452; 7 Watts, 152.

INFORMALITY. The waut of those forms required by law. Informality is a good ground for a plea in abatement. Com. Dig. Abatement, H 1, 6; Lawes, Pl. 106; Gould, Pl. c. 5, part 1, _132.

INFORMATION. An accusation or complaint made in writing to a court of competent jurisdiction, charging some person with a specific violation of some public law. It differs in nothing from an indictment in its form and substance, except that it is filed at the discretion of the proper law officer of the government, ex officio, without the intervention or approval of a grand jury. 4 Bl. Com. 308, 9.

2. In the French law, the term information is used to signify the act or instrument which contains the depositions of witnesses against the accused. Poth. Proc. Cr. sect. 2, art. 5 .

3. Informations have for their object either to punish a crime or misdemeanor, and these have,.perhaps, never been resorted to in the United States or to recover penalties or forfeitures, which are quite common. For the form and requisites of an information for a penalty, see 2 Chit. Pr. 155 to 171. Vide Blake's Ch. 49; 14 Vin. Ab. 407; 3 Story, Constitution, _1780 3 Bl. Com. 261.

4. In summary proceedings before justices of the peace, the complaint or accusation, at least when the proceedings relate to a penalty, is called an information, and it is then taken down in writing and sworn to. As the object is to limit the informer to a certain charge, in order that the defendant may know what he has to defend, and the justice may limit the evidence and his subsequent adjudication to the allegations in the information, it follows that the substance of the particular complaint must be stated and it must be sufficiently formal to contain all material averments. 8 T. R. 286; 5 Barn. & Cres. 251; 11 E. C. L. R. 217; 2 Chit. Pr. 156. See 1 Wheat. R. 9.

INFORMATION IN THE NATURE OF A WRIT OF QUO WARRANTO, remedies. The name of a proceeding against any one who usurps a franchise or office.

2. Informations of this kind are filed in the highest courts of ordinary jurisdiction in the several states, either by the attorney−general, of his own authority, or by the prosecutor, who is entitled, pro forma, to use his name, as the case may be. 6 Cowen, R. 102, n.; 10 Mass. 290; 2 Dall. 112; 2 Halst. R. 101; 1 Rep Const. Ct. So. Car. 86; 3 Serg. & Rawle, 52; 15 Serg. & Rawle, 127: Though, in form, these informations are criminal, they are, in their nature, but civil proceedings. 3 T. R. 484; Kyd on Corp. 439. They are used to try a civil right, or to oust a wrongful possessor of an office. 3 Dall. 490; 1 Serg. & Rawle. 385, For a full and satisfactory statement of the law on this subject, the reader is referred to Angell on Corp. ch. 20. p. 469. And see Quo Warranto.

INFORMATUS NON SUM, pleading, practice. I am not informed; a formal answer made in court, or put upon record by an attorney when he has nothing to say in defence of his client. Styles Reg. 372.

INFORMER. A person who informs or prefers an accusation against another, whom he suspects of the violation of some penal statute.

2. When the informer is entitled to the penalty or part of the penalty, upon the conviction of an offender, he is or is not a competent witness, accordingly as the statute creating the penalty has or has not made him so. 1 Phil. Ev. 97; Rosc. Cr. Ev. 107; 5 Mass. R. 57; 1 Dall. 68; 1 Saund. 262, c. Vide articles Prosecutor; Rewards.

INFORTIATUM, civil law. The second part of the Digest or Pandects of Justinian, is called infortiatum: see Digest. This part, which commences with the third title of the twenty−fourth book, and ends with the thirty−eighth book, was thus called because it was the middle part, which, it was said, was supported and fortified by the two others. Some have supposed that this name was given to it, because it treats of successions, substitutions, and other important matters, and being, more used than the others, produced greater fees to the lawyers.

INFRA, Latin. Below, under, beneath, underneath. The opposite of supra, above. Thus we say primo gradu est supra, pater, mater; infra, filius, filia. In the first degree of kindred in the ascending line; above, is the father and the mother; below, in the descending line, the son and daughter. Inst. 3, 6, l.

2. In another, sense, this word signifies within; as, infra corpus comitatus, within the body of the county; infra proesidia, within the guards.

3. It also signifies during; as infra furorem during the madness.

INFRA ATATEM. Under age that is, during infancy, or before arriving at the full age of twenty−one years.

INFRA CORPUS COMITATUS. Within the body of the countt.

2. The common law courts have jurisdiction infra corpus comitatus; the admiralty, on the contrary, has no such jurisdiction, unless, indeed, the tide water may extend within such county. 5 Howard's U. S. Rep. 441, 451.

INFRA DIGNITATEM CURAE. Below the dignity of the court. Example, in equity a demurrer will lie to a bill on the ground of the triviality of the matter in dispute, as being below the dignity of the court. See 4 John. Ch. 183; 4 Paige, 364; 4 Bouv. Inst. n. 4237.

INFRA HOSPITIUM. Within the inn when once a traveller's baggage comes infra hospitium, that is, in the care and under the charge of the innkeeper, it is at his risk. See Guest; Innkeeper.

INFRA PRAESIDIA. This term is used in relation to prizes, to signify that they have been brought completely in the power of the captors, that is, within the towns, camps, ports or fleet of the captors. Formerly, the rule was, and perhaps still in some countries is, that the act of bringing a prize infra praesidia, changed the property but the rule now established is, that there must be a sentence of condemnation to effect this purpose. 1 Rob. Adm. R. 134; 1 Kent's Com. 104; Chit. Law of Nat. 98; Abb. Sh. 14; Hugo, Droit Romain, _90.

INFRACTION. The breach of a law or agreement; the violation of a compact. In the French law this is the generic expression to designate all actions which are punishable by the code of France.

INFUSION, med. jur. A pharmaceutical operation, which consists in pouring a hot or cold fluid upon a substance, whose medical properties it is desired to extract. Infusion is also used for the product of this operation. Although infusion differs from decoction, (q. v.) they are said to be ejusdem generis; and in the case of an indictment which charged the prisoner with giving a decoction, and the evidence was that he had given an infusion, the difference was held to be immaterial. 8 Camp. R. 74.

INGENUI, civ. law. Those freemen who were born free. Vicat, vocab.

2. They were a class of freemen, distinguished from those who, born slaves, had afterwards legally obtained their freedom the latter were called at various periods, sometimes liberti, sometimes libertini. An unjust or illegal servitude did not prevent a man from being ingenuus.

INGRATITUDE. The forgetfulness of a kindness or benefit.

2. In the civil law, ingratitude on the part of a legatee, was sufficient to defeat a legacy in his favour. In Louisiana, donations inter vivos are liable to be revoked or dissolved on account of the ingratitude of the donee; but the revocation on this account can, take place only, in the three following cases: 1. if the donee has attempted to take the life of the donor. 2. If he has been guilty towards him of cruel treatmeut, crimes or grievous injuries. 3. If he has refused him food when in distress. Civ. Code of Lo. art. 1546, 1547; Poth. Donations Entrevifs, s. 3, art. 1, _1. There are no such rules in the common law. Ingratitude is not punishable by law.

INGRESS, EGRESS AND REGRESS. These words are frequently used in leases to express the right of the lessee to enter, go upon, and return from the lands in question.

INGRESSU. An ancient writ of entry, by which the plaintiff or complainant sought an entry into his lands. Techn. Dict. h. t.

INGROSSING, practice. The act of copying from a rough draft a writing in order that it may be executed; as, ingrossing a deed.

INHABITANT. One who has his domicil in a place is an inhabitant of that place; one who has an actual fixed residence in a place.

2. A mere intention to remove to a place will not make a man an inhabitant of such place, although as a sign of such intention he may have sent his wife and children to reside there. 1 Ashm. R. 126. Nor will his intention to quit his residence, unless consummated, deprive him of his right as an inhabitant. 1 Dall. 480. Vide 10 Ves. 339; 14 Vin. Ab. 420; 1 Phil. Ev. Index, h. t.; Const. of Mass., part 2, c. 1, s. 2, a. 1; Kyd on Corp. 321; Anal. des Pand. de Poth. mot Habitans; Poth. Pand. lib. 50, t. 1, s. 2; 6 Adolph. & Ell. 153; 33 Eng. Common Law Rep. 31.

3. The inhabitants of the United States may be classed into, 1. Those born within the country; and, 2. Those born out of it.

4. − 1. The natives consist, 1st. Of white persons, and these are all citizens of the United States, unless they have lost that right. 2d. Of the aborigines, and these are not in general, citizens of the United States nor do they possess any political power. 3d. Of negroes, or descendants of the African race, and these generally possess no political authority whatever, not being able to vote, nor to hold any office. 4th. Of the children of foreign ambassadors, who are citizens or subjects as their fathers are or were at the time of their birth.

5. − 2. Persons born out of the jurisdiction of the United States, are, 1st. children of citizens of the United States, or of persons who have been such; they are citizens of the United States, provided the father of such children shall

have resided within the same. Act of Congress of April 14, 1802, _4. 2d. Persons who were in the country at the time of the adoption of the constitution; these have all the rights of citizens. 3d. Persons who have become naturalized under the laws of any state before the passage of any law on the subject of naturalization by Congress, or who have become naturalized under the acts of congress, are citizens of the United States, and entitled to vote for all officers who are elected by citizens, and to hold any office except those of president and vice−president of the United States. 4th. Children of naturalized citizens, who were under the age of twenty−one years, at the time of their parent's being so naturalized or admitted to the rights of citizen−ship, are, if then dwelling in the United States, considered as citizens of the United States, and entitled to the same rights as their respective fathers. 5th. Persons who resided in a territory which was annexed to the United States by treaty, and the territory became a state; as, for example, a person who, born in France, moved to Louisiana in 1806, and settled there, and remained in the territory until it was admitted as a state, it was held, that although not naturalized under the acts of congress, he was a citizen of the United States. Deshois' Case, 2 Mart. Lo. R. 185. 6th. Aliens or foreigners, who have never been naturalized, and these are not citizens of the United States, nor entitled to any political rights whatever. See Alien; Body politic; Citizen; Domicil; Naturalization.

INHERENT POWER. An authority possessed without its being derived from another. It is a right, ability or faculty of doing a thing, without receiving that right, ability or faculty from another.

INHERITANCE, estates. A perpetuity in lands to a man and his heirs; or it is the right to succeed to the estate of a person who died intestate. Dig. 50, 16, 24. The term is applied to lands.

2. The property which is inherited is called an inheritance.

3. The term inheritance includes not only lands and tenements which have been acquired by descent, but also every fee simple or fee tail, which a person has acquired by purchase, may be said to be an inheritance, because the purchaser's heirs may inherit it. Litt. s. 9.

4. Estates of inheritance are divided into inheritance absolute, or fee simple; and inheritance limited, one species of which is called fee tail. They are also divided into corporeal, as houses and lands and incorporeal, commonly called incorporeal hereditaments. (q. v.) 1 Cruise, Dig. 68; Sw. 163; Poth. des Retraits, n. 2 8.

5. Among the civilians, by inheritance is understood the succession to all the rights of the deceased. It is of two kinds, 1 . That which arises by testament, when the testator gives his succession to a particular person; and, 2. That which arises by operation of law, which is called succession ab intestat. Hein. Lec. El. _484, 485.

INHIBITION, Scotch law,. A personal prohibition which passes by letters under the signet, prohibiting the party inhibited to contract any debt, or do . any deed, by which any part of the lands may be aliened or carried off, in prejudice of the creditor inhibiting. Ersk. Pr. L. Scot. B. 2, t. 11, s. 2. See Diligences.

2. In the civil law, the probibition which the law makes, or a judge ordains to an individual, is called inhibition.

INHIBITION, Eng. law. The name of a writ which forbids a judge from further proceeding in a cause depending before him; it is in the nature of a prohibition. T. de la Ley; F. N. B. 39.

INIQUITY. Vice; contrary to equity; injustice.

2. Where, in a doubtful matter, the judge is required to pronounce, it is his duty to decide in such a manner as is the least against equity.

INITIAL. Placed at the beginning. The initials of a man's name are the first letters of his Dame; as, G. W. for George Washington. When in a will the legatee is described by the initials of his name only, parol evidence may be given to prove his identity. 3 Ves. 148. And a signature made simply with initials is binding. 1 Denio, R. 471. But see Ersk. Inst. B. 3, t. 2, n. 8.

INITIALIA TESTIMONII, Scotch law. Before a witness can be examined in chief, he may be examined with regard to his disposition, whether he bear good or ill will towards either of the parties whether he has been prompted what to say whether he has received a bribe, and the like. This previous examination, which somewhat resembles our voir dire, is called initialia testimonii.

INITIATE. A right which is incomplete. By the birth of a child, the hushand becomes tenant by the curtesy initiate, but his estate is not consummate until the death of the wife. 2 Bouv. Inst. n. 1725.

INITIATIVE, French law. The name given to the important prerogative given by the charte constitutionelle, art. 16, to the late king to propose through his ministers projects of laws. 1 Toull. n. 39. See Veto.

INJUNCTION, remedies, chancery, practice. An injunction is a prohibitory writ, specially prayed for by a bill, in which the plaintiff's title is set forth, restraining a person from committing or doing an act (other than criminal acts) which appear to be against equity and conscience. Mitf. Pl. 124; 1 Madd. Ch. Pr. 126.

2. Injunctions are of two kinds, the one called the writ remedial, and the other the judicial writ.

3. − 1st. The former kind of injunction, or remedial writ, is in the nature of a prohibition, directed to, and controlling, not the inferior court, but the party. It is granted, when a party is doing or is about to do an act against equity or good conscience, or litigious or vexatious; in these cases, the court will not leave the party to feel the mischief or inconvenience of the wrong, and look to the courts of common law for redress, but will interpose its authority to restrain such unjustifiable proceedings.

4. Remedial injunctions are of two kinds common or special. 1. It is common when it prays to stay proceedings at law, and will be granted, of course; as, upon an attachment for want of an appearance, or of an answer; or upon a dedimus obtained by the defendant to take his answer in the country; or upon his praying for time to answer, &c. Newl. Pr. 92; 13 Ves, 323. 2. A special injunction is obtained only on motion or petition, with notice to the other party, and is applied for, sometimes on affidavit before answer, but more frequently upon the merits disclosed in the defendant's answer. Injunctions before answer are granted in cases of waste and other injuries of so urgent a nature, that mischief would ensue if the plaintiff were to wait until the answer were put in; but the court will not grant an injunction during the pen−dency of a plea or demurrer to the bill, for until that be argued, it does not appear whether or not the court has jurisdiction of the cause. The injunction granted in this stage of the suit, is to continue till answer or further order; the injunction obtained upon the merits confessed in the answer, continues generally till the hearing of the cause.

5. An injunction is generally granted for the purpose of preventing a wrong, or preserving property in dispute pending a suit. Its effect, in general, is only in personam, that is, to attach and punish the party if disobedient in violating the injunction. Ed. Inj. 363; Harr. Ch. Pr. 552.

6. The principal injuries which may be prevented by injunction, relate to the person, to personal property, or to real property. These will be separately considered.

7. − 1. With respect to the person, the chancellor may prevent a breach of the peace, by requiring sureties of the peace. A court of chancery has also summary and extensive jurisdiction for the protection of the relative rights of persons, as between hushand and wife, parent and child, and guardian and ward; and in these cases, on a proper state of facts, an injunction will be granted. For example, an injunction may be obtained by a parent to prevent the marriage of his infant son. 1 Madd. Ch. Pr. 348; Ed. Inj. 297; 14 Ves. 206; 19 Ves. 282; 1 Chitt. Pr. 702.

8. − 2. Injunctions respecting personal property, are usually granted, 1st. To restrain a partner or agent from making or negotiating bills, notes or contracts, or doing other acts injurious to the partner or principal. 3 Ves. jr. 74; 3 Bro. C. C. 15; 2 Campb. 619; 1 Price, R. 503; 1 Mont. on Part. 93; 1 Madd. Ch. Pr. 160; Chit. Bills, 58, 61; 1 Hov. Supp. to Ves. jr. *335; Woodd. Lect. 416.

9. − 2d. To restrain the negotiation of bills or notes obtained by fraud, or without consideration. 8 Price, R. 631; Chit. Bills, 31 to 41; Ed. Inj. 210; Blake's Ch. Pr. 838; 2 Anst. 519; 3 Anst. 851; 2 Ves. jr. 493; 1 Fonb. Eq. 43; 1 Madd. Ch. Pr. 154. 3d. To deliver up void or satisfied deeds. 1 V. & B. 244; 11 Ves. 535; 17 Ves. 111. 4th. To enter into and deliver a proper security. 1 Anst, 49. 5th. To prevent breaches of covenant or contract, and enjoin the performance of others. Ed. Inj. 308. 6th. To prevent a breach of confidence or good faith, or to prevent other loss as, for example, to restrain the disclosure of secrets, which came to the defendant's knowledge in the course of any confidential employment. 1 Sim. R. 483 and see 1 Jac. & W. 394. An injunction will be granted to prevent the publication of private letters without the authors consent. Curt. on Copyr. 90; 2 Atk. 342; Ambl. 137; 2 Swanst. 402, 427; 1 Ball & Beat. 207; 2 Ves. & B. 19; 1 Mart. Lo. R. 297; Bac. Ab. Injunction A. But the publication will be allowed when necessary to the defence of the character of the party who received them. 2 Ves. & B. 19. 7th. To prevent improper sales, payments, or conveyances. Chit. Eq. Dig. tit. Practice, xlvii. 8th. To prevent loss or inconvenience; this can be obtained on filing a bill quia timet. (q. v.) 1 Madd. Ch. Pr. 218 to 225. 9th. To prevent waste of property by an executor or administrator. Ed. Inj. 300; 1 Madd. Ch. Pr.; 160, 224. 10th. To restrain the infringement of patents; Ed. Inj. ch. 12; 14 Ves. 130; 1 Madd. Ch. Pr. 137; or of copyrights; Ed. Inj. c. 13; 8 Ares. 225; 17 Ves. 424. 11th. To stay proceedings in a court of law. These proceedings will be stayed when justice cannot be done in consequence of accident; 1 John. Cas. 417: 4 John. Ch. R. 287,194; Latch, 24, 146, 148; 1 Vern. 180, 247; 1 Ch. C. 77, 120; 1 Eq. Cas. Ab. 92; or mistake; 1 John. Ch. R. 119, 607; 2 John. Ch. R. 585; 4 John. Ch. R. 85; Id. 144; 2 Munf. 187; 1 Day's Cas. Err. 139; 3 Ch. R. 55; Finch., 413; 2 Freem. 16; Fitzg. 118; or fraud. 1 John. Ch. R. 402; 2 John. Ch. R. 512; 4 John. Ch. R. 65. But no injunction will be granted to stay proceedings in a criminal case. 2 John. Ch. R. 387; 6 Mod. 12; 2 Ves. 396.

9. − 3. Injunctions respecting real property, may be obtained, 1st. To prevent wasteful trespasses or irreparable

damages, although the owner may be entitled to retake possession, if he can do so, without a breach of the peace. 1 Chit. Pr. 722. 2d. To compel the performance of lawful works in the least, injurious manner. 1 Turn. & Myl. 181. 3d. To prevent waste. 3 Tho. Co. Litt. 241, M; 1 Madd. Ch. Pr. 138; Ed. Inj. ch. 8, 9, and 10; 1 John. Ch. R. 11; 2 Atk. 183. 4th. To prevent the creation of a nuisance, either private or public. 1. Private nuisance; for example, to restrain the owner of a house from making any erections or improvements, so as materially to darken or obstruct the ancient lights and windows of an adjoining house. 2 Russ. R. 121. 2. Public nuisances. Though usual to prosecute the parties who create nuisances, by indictment, yet, in some cases, an injunction may be had to prevent the creating of such nuisance. 5 Ves. 129; 1 Mad. Ch. 156; Ed. Inj. ch. 11.

10. − 2d An injunction of the second kind, called the judicial writ, issues subsequently to a decree. It is a direction to yield up, to quit, or to continue possession of lands, and is properly described as being in the nature of an execution. Ed. Inj. 2. 11. Injunctions are also divided into temporary and perpetual. 1. A temporary injunction is one which is granted until some stage of the suit shall be reached; as, until the defendant shall file his answer; until the bearing; and the like. 2. A perpetual injunction is one which is issued when, in the opinion of the court, at the hearing the plaintiff has established a case, which entitles him to an injunction; or when a bill, praying for an injunction, is taken pro confesso; in such cases a perpetual injunction will be decreed. Ed. Inj. 253.

12. The interdict (q. v.) of the Roman law resembles, in many respects, our injunction. It was used in three distinct, but cognate senses. 1. It was applied to signify the edicts made by the proctor, declaratory of his intention to give a remedy in certain cases, chiefly to preserve or to restore possession; this interdict was called edictal; edictale, quod praetoriis edictis proponitur, ut sciant omnes ea forma posse implorari. 2. It was used to signify his order or decree, applying the remedy in the given case before him, and then was called decretal; decretale, quod praetor re nata implorantibus decrevit. It is this which bears a strong resemblance to the injunction of a court of equity. 3. It was used, in the last place, to signify the very remedy sought in the suit commenced under the proctor's edict; and thus it became the denomination of the action itself. Livingston on the Batture case, 5, Am. Law Jour. 271; 2 Story, Eq. Jur. _865; Analyse des Pandectes de Pothier, h.t.; Dict. du Dig. h.t.; Clef des Lois Rom. h. t.; Heineccii, Elem. Pand. Ps. 6, _285, 28

Vide, generally, Eden on Injunctions; 1 Madd. Ch. Pr. 125 to 165; Blake's Ch. Pr. 330 to 344; 1 Chit. Pr. 701 to 731; Coop. Eq. Pl. Index, h. t.; Redesd. Pl. Index, h. t.; Smith's Ch. Pr. h. t.; 14 Vin. Ab. 442; 2 Hov. Supp. to Ves. jr. 173, 434, 442; Com. Dig. Chancery, D 8; Newl. Pr. o. 4, s. 7; Bouv. Inst. Index, h. t.

INJURIA ABSQUE DAMNO. Injury without damage. Injury without damage or loss will not bear an action. The following, cases illustrate this principle. 6 Mod. Rep. 46, 47, 49; 1 Shower, 64; Willes, Rep. 74, note; 1 Lord Ray. 940, 948; 2 Bos. & Pull. 86; 9 Rep. 113; 5 Rep. B. N. P. 120. 72

INJURIOUS WORDS. This phrase is used, in Louisiana, to signify slander, or libelous words. Code, art. 3501.

INJURY. A wrong or tort. Injuries are divided into public and private; and they affect the. person, personal property, or real property.

3. − 1. They affect the person absolutely or relatively. The absolute injuries are, threats and menaces, assaults, batteries, wounding, mayhems; injuries to health, by nuisances or medical malpractices. Those affecting reputation are, verbal slander, libels, and malicious prosecutions; and those affecting personal liberty are, false imprisonment and malicious prosecutions. The relative injuries are those which affect the rights of a hushand; these are, abduction of the wife, or harboring her, adultery and battery those which affect the rights of a parent, as, abduction, seduction, or battery of a child; and of a master, seduction, harboring and battery of his apprentice or servant. Those which conflict with the rights of the inferior relation, namely, the wife, child, apprentice, or servant, are, withholding conjugal rights, maintenance, wages, &c.

4. − 2. Injuries to personal property, are, the unlawful taking and detention thereof from the owner; and other injuries are, some damage affecting the same while in the claimant's possession, or that of a third person, or injuries to his reversionary interests.

5. − 3. Injuries to real property are, ousters, trespasses nuisances, waste, subtraction of rent, disturbance of right of way, and the like.

6. Injuries arise in three ways. 1. By nonfeasance, or the not doing what was a legal obligation, or. duty, or contract, to perform. 2. Misfeasance, or the performance, in an improper manner, of an act which it was either the party's duty, or his contract, to perform. 3. Malfeasance, or the unjust performance of some act which the party had no right, or which he had contracted not to do.

7. The remedies are different, as the injury affects private individuals, or the public. 1. When the injuries affect a

private right and a private individual, although often also affecting the public, there are three descriptions of remedies: 1st. The preveative, such as defence, resistance, recaption, abatement of nuisance, surety of the peace, injunction, &c. 2d. Remedies for compensation, which may be by arbitration, suit, action, or summary proceedings before a justice of the peace. 3d. Proceedings for punishment, as by indictment, or summary Proceedings before a justice. 2. When the injury is such as to affect the public, it becomes a crime, misdemeanor, or offence, and the party may be punished by indictment or summary conviction, for the public injury; and by civil action at the suit of the party, for the private wrong. But in cases of felony, the remedy by action for the private injury is generally suspendid until the party particularly injured has fulfilled his duty to the public by prosecuting the offender for the public crime; and in cases of homicide the remedy is merged in the felony. 1 Chit. Pr. 10; Ayl. Pand. 592. See 1 Miles' Rep. 316, 17; and article Civil Remedy.

8. There are many injuries for which the law affords no remedy. In general, it interferes only when there has been a visible bodily injury inflicted by force or poison, while it leaves almost totally unprotected the whole class of the most malignant mental injuries and sufferings unless in a few cases, where, by descending to a fiction, it sordidly supposes some pecuniary loss, and sometimes, under a mask, and contrary to its own legal principles, affords compensation to wounded feelings. A parent, for example, cannot sue, in that character, for an injury inflicted on his child and when his own domestic happiness has been destroyed, unless the fact will sustain the allegation that the daughter was the servant of her father, and that, by, reason of such seduction, he lost the benefit of her services. Another instance may be mentioned: A party cannot recover damages for verbal slander in many cases; as, when the facts published are true, for the defendant would justify and the party injured must fail. A case of this kind, remarkably bard, occurred in England. A young nobleman had seduced a young woman, who, after living with him some time, became sensible of the impropriety of her conduct. She left him secretly, and removed to an obscure place in the kingdom, where she obtained a situation, and became highly respected in consequence of her good conduct she was even promoted to a better and more public employment when she was unfortunately discovered by her seducer. He made proposals to her to renew their illicit intercourse, which were rejected; in order to, force her to accept them, he published the history of her early life, and she was discharged from her employment, and lost the good opinion of those on whom she depended for her livelihood. For this outrage the culprit could not be made answerable, civilly or criminally. Nor will the law punish criminally the author of verbal slander, imputing even the most infamous crimes, unless done with intent to extort a chattel, money, or valuable thing. The law presumes, perhaps unnaturally enough, that a man is incapable of being alarmed or affected by such injuries to his feelings. Vide 1 Chit. Med. Jur. 320. See, generally, Bouv. Inst. Index, h. t.

INJURY, civil law, In the technical sense of the term it is a delict committed in contempt, or outrage of any one, whereby his body, his dignity, or his reputation, is. maliciously injured. Voet, Com. ad Pand. lib. 47, t. 10, n. 1.

2. Injuries may be divided into two classes, With reference to the means used by the wrong doer, namely, by words and by acts. The first are called verbal injuries, the latter real.

3. A verbal injury, when directed against a private person, consists in the uttering contumelious words, which tend to expose his character, by making him little or ridiculous. Where the offensive words are uttered in the beat of a dispute, and spoken to the person's face, the law does not presume any malicious intention in the utterer, whose resentment generally subsides with his passion;, and yet, even in that case, the truth of the injurious words seldom absolves entirely from punishment. Where the injurious expressions have a tendency to blacken one's moral character, or fix some particular guilt upon him, and are deliberately repeated in different companies, or banded about in whispers to confidants, it then grows up to the crime of slander, agreeably to the distinction of the Roman law, 1. 15, _12, de injur.

4. A reat injury is inflicted by any fact by which a person's honor or dignity is affected; as striking one with a cane, or even aiming a blow without striking; spitting in one's face; assuming a coat of arms, or any other mark of distinction proper to another, &c. The composing and publish in defamatory libels maybe reckoned of this kind. Ersk. Pr. L. Scot. 4, 4, 45.

INJUSTICE. That which is opposed to justice.

2. It is either natural or civil. 1. Natural injustice is the act of doing harm to mankind, by violating natural rights. 2. Civil injustice, is the unlawful violation of civil rights.

INLAGARE. To admit or restore to the benefit of law.

INLAGATION. The restitution of one outlawed to the protection of the law. Bract. lib. 2, c. 14.

INLAND. Within the same country.

2. It seems not to be agreed whether the term inland applies to all the United States or only to one state. It has been holden in Now York that a bill of exchange by one person in one state, on another person in another, is an inland bill of exchange; 5 John. Rep. 375; but a contrary opinion seems to have been held in the circuit court of the United States for Pennsylvania. Whart. Dig. tit. Bills of Exchange, E, pl. 78. Vide 2 Phil. Ev. 36, and Bills of Exchange.

INMATE. One who dwells in a part of another's house, the latter dwelling, at the same time, in the said house. Kitch. 45, b; Com. Dig. Justices of the Peace, B 85; 1 B. & Cr. 578; 8 E. C. L. R. 153; 2 Dowl. & Ryl. 743; 8 B. & Cr. 71; 15 E. C. L. R. 154; 2 Mann. & Ryl. 227; 9 B. & Cr. 176; 17 E. C. L. R. 385; 4 Mann. & Ryl. 151; 2 Russ. on Cr. 937; 1 Deac. Cr. L. 185; 2 East, P. Cr. 499, 505; 1 Leach's Cr. L. 90, 237, 427; Alcock's Registration Cases, 21; 1 Mann. & Gran. 83; 39 E. C. L. R. 365. Vide Lodger.

INN. A house where a traveller is furnished with every thing he has occasion for while on his way. Bac. Ab. Inns. B; 12 Mod. 255; 3 B. & A. 283; 4 Campb. 77; 2 Chit. Rep. 484; 3 Chit. Com. Law, 365, n. 6.

2. All travellers have a lawful right to enter an inn for the purpose of being accommodated. It has been held that an innkeeper in a town'through which lines of stages pass, has no right to, exclude the driver of one of these lines from his yard and the common public rooms, where travellers are usually placed, who comes there at proper hours, and in a proper manner, to solicit passengers for his coach, and without doing any injury to the innkeeper. 8 N. H. R. 523; Hamm. N. P. 170. Vide Entry; Guest.

INNAVIGABLE. Not capable of being navigated.

INNINGS, estates. Lands gained from the sea by draining. Cunn. L. Dict. h. t.; Law of Sewers, 31.

INNKEEPER. He is defined to be the keeper of a common inn for the lodging and entertainment of travellers and passengers, their horses and attendants, for a reasonable compensation. Bac. Ab. Inns, &c.; Story, Bailm. _475. But one who entertains strangers occasionally, although he may receive compensation for it, is not an innkeeper. 2 Dev. & Bat. 424.

2. His duties will be first considered and, secondly, his rights.

3. − 1. He is bound to take in and receive all travellers and wayfaring persons, and to entertain them, if he can accommodate them, for a reasonable compensation; and he must guard their goods with proper diligence. He is liable only for the goods which are brought within the inn. 8 Co. 32; Jones' Bailm. 91. A delivery of the goods into the custody of the innkeeper is not, however, necessary, in order to make him responsible; for although he may not know anything of such goods, he is bound to pay for them if they are stolen or carried away, even by an unknown person; 8 Co. 32; Hayw. N. C. R. 41; 14 John. R. 175; 1 Bell's Com. 469; and if he receive the guest, the custody of the goods may be considered as an* accessory to the principal contract; and the money paid for the apartments as extending to the care of the box and portmanteau. Jones' Bailm. 94; Story, Bailm. _470; 1 Bl. Com. 430; 2 Kent, Com. 458 to 463. The degree of care which the innkeeper is bound to take is uncommon care, and he will be liable for a slight negligence. He is responsible for the acts of his domestics and servants, as well as for the acts of his other guests, if the goods are stolen or lost; but he is not responsible for any tort or injury done by his servants or others, to the, person of his guest, without his own cooperation or consent. 8 Co. 32. The innkeeper will be excused whenever the loss has occurred through the fault of the guest. Story, Bailm. _483: 4 M. & S. 306; S. C. 1 Stark. R. 251, note 2 Kent, Com. 461; 1 Yeates' R. 34.

4. − 2. The innkeeper is entitled to a just compensation for his care and trouble in taking care of his guest and his property; and to enable him to obtain this, the law invests him with some peculiar privileges, giving him alien upon the goods, of the guest, brought into the inn, and, it is said, upon the person of his guest, for his compensation. 3 B. & Ald. 287; 8 Mod. 172; 1 Shower, Rep. 270; Bac. Ab. Inns, &c., D. But the horse of the guest can be detained only for his own keeping, and not for the boarding and personal expenses of the guest. Bac. Ab. h. t. The landlord may also bring an action for the recovery of his compensation.

Vide, generally, 1 Vin. Ab. 224; 14 Vin. Ab. 436; Bac. Ab. h. t.; Yelv. 67, a, 162, a; 2 Kent, Com. 458; Ayl. Pand. 266; 9 Pick. 280; 21 Wend. 285; 1 Yeates, 35: Oliph. on the Law of Horses, 125; Bouv. Inst. Index, h. t.

INNOCENCE, The absence of guilt.

2. The law presumes in favor of innocence, even against another presumption of law: for example, when a woman marries a second hushand within the space of twelve months after her hushand had left the country, the presumption of innocence preponderates over the presumption of the continuance of life. 2 B. & A. 386 3 Stark. Ev. 1249. An exception to this rule respecting the presumption of innocence has been made in the case of the publication of a libel, the principal being presumed to have authorized the sale, when a libel is sold by his agent in

his usual place of doing business. 1 Russ. on Cr. 341; 10 Johns. R. 443; Bull. N. P. 6; Greenl. Ev. _36. See 4 Nev. & M. 341; 2 Ad. & Ell. 540; 5 Barn. & Ad. 86; 1 Stark. N. P. C. 21; 2 Nov. & M. 219.

INNOCENT CONVEYANCES. This term is used in England, technically, to signify those conveyances made by a tenant of his leasehold, which do not occasion a forfeiture these are conveyances by lease and release, bargain and sale, and a covenant to stand seised by a tenant for life. 1 Chit. Pr. 243, 244.

2. In this country forfeitures for alienation of a greater right than the tenant possesses, are almost unknown. The more just principle prevails that the conveyance by the tenant, whatever be its form, operates only on his interest. Vide Forfeiture,

INNOMINATE CONTRACTS, civil law. Contracts which have no particular names, as permutation and transaction, are so called. Inst. 2, 10, 13. There are many innominate contracts, but the Roman lawyers reduced thein to four classes, namely, do ut des, do ut facias, facio ut des, and facio ut facias. (q. v.) Dig. 2, 14, 7, 2.

INNOTESCIMUS, English law. An epithet used for letters−patent, which are always of a charter of feoffment, or some other instrument not of record, concluding with the words Innotescimus per praesentes, &c. Tech. Dict. h. t.

INNOVATION. Change of a thing established for something new.

2. Innovations are said to be dangerous, as likely to unsettle the common law. Co. Litt. 370, b; Id. 282, b. Certainly no innovations ought to be made by the courts, but as every thing human, is mutable, no legislation can be, or ought to be immutable; changes are required by the alteration of circumstances; amendments, by the imperfections of all human institutions but laws ought never to be changed without great deliberation, and a due consideration of the reasons on which they were founded, as of the circumstances under which they were enacted. Many innovations have been made. in the common law, which philosophy, philanthropy and common sense approve. The destruction of the benefit of clergy; of appeal, in felony; of trial by battle and ordeal; of the right of sanctuary; of the privilege to abjure the realm; of approvement, by which any criminal who could, in a judicial combat, by skill, force or fraud kill his accomplice, secured his own pardon of corruption of blood; of constructive treason; will be sanctioned; by all wise men, and none will desire a return to these barbarisms. The reader is referred to the case of James v. the Commo wealth, 12 Serg. & R. 220, and 225 to 2 Duncan, J., exposes the absurdity of some ancient laws, with much sarcasm.

INNOVATION, Scotch law. The exchange of one obligation for another, so that the second shall come in the place of the first. Bell's Scotch Law Dict. h. t. The same as Novation. (q. v.)

INNS OF COURT, Engl. law. The name given to the colleges of the English professors and students of the common law. 2. The four principal Inns of Court are the Inner Temple and Middle Temple, (formerly belonging to the Knights Templars) Lincoln's Inn, and Gray's Inn, (ancient belonging to the earls of Lincoln and ray.) The other inns are the two Sergeants' Inns. The Inns of Chancery were probably so called because they were once inhabited by such clerks, as chiefly studied the forming of writs, which regularly belonged to the cursitors, who are officers of chancery. These are Thavie's Inn, the New Inn, Symond's Inn, Clement's Inn, Clifford's Inn,' Staple's Inn, Lion's Inn, Furnival's Inn and Barnard's Inn. Before being called to the bar, it is necessary to be admitted to one of the Inns of Court.

INNUENDO, pleading. An averment which explains the defendoant's meaning by reference to antecedent matter. Salk. 513; 1 Ld. Raym. 256; 12 Mod. 139; 1 Saund. 243. The innuendo is mostly used in actions for slander. An innuendo, as, "he the said plaintiff meaning," is only explanatory of some matter expressed; it serves to apply the slander to the precedent matter, but cannot add or enlarge, extend, or change the sense of the previous words, and the matter to which it alludes must always appear from the antecedent parts of the declaration or indictment. 1 Chit. Pl. 383; 3 Caines' Rep. 76; 7 Johns. R. 271; 5 Johns. R. 211; 8 Johns. R. 109; 8 N. H. Rep. 256.

3. It is necessary only when the intent may be mistaken, or when it cannot be collected from the libel or slander itself. Cowp. 679; 5 East, 463.

4. If the innuendo materially enlarge the sense of the words it will vitiate the declaration or indictment. 6 T. R. 691; 5 Binn. 218; 5 Johns. R. 220; 6 Johns. R. 83; 7 Johns. Rep. 271. But when the new matter stated in an innuendo is not necessary to support the action, it may be rejected as surplusage. 9 East, R. 95; 7 Johns. R. 272. Vide, generally, Stark. on Slan. 293; 1 Chit. Pl. 383; 3 Chit. Cr. Law, 873; Bac. Ab. Slander, R; 1 Saund. 243, n. 4; 4 Com. Dig. 712; 14 Vin. Ab. 442; Dane's Ab. Index, h. t.; 4 Co. 17.

INOFFICIOUS, civil law. This word is frequently used with others; as, inofficious testament, inofficiosum testamentum; inofficious gift, donatio inofficiosa. An inofficious testament is one not made according to the rules

of piety; that is, one made by which the testator has unlawfully omitted or disinherited one of his heirs. Such a disposition is void by the Roman civil law. Dig. 5, 2, 5; see Code, 3, 29; Nov. 115; Ayl. Pand. 405; Civil Code of Lo. art. 3522, n. 21.

INOPS CONSILII. Destitute or without counsel. In the construction of wills a greater latitude is given, because the testator is supposed to have been inops consilii.

INQUEST. A body of men appointed by law to inquire into certain matters; as, the inquest examined into the facts connected with the alleged murder; the grand jury, is sometimes called the grand inquest. The judicial inquiry itself is also called an inquest. The finding of such men, upon an investigation, is also called an inquest or an inquisition.

2. An inquest of office was bound to find for the king upon the direction of the court. The reason given is that the inquest coucluded no man of his right, but only gave the king an opportunity to enter so that he could have his right tried. Moore, 730; Vaughan, 135; 3 H. VII. 10; 2 H. IV. 5; 3 Leon. 196.

INQUIRY, WRIT OF. A writ of inquiry is one issued where a judgment has been entered in a case sounding in damages, without any particular amount being ascertained; this writ is for the purpose of ascertaining the amount to which the plaintiff is entitled. Vide Writ Of Inquiry.

INQUISITION, practice. An examination of certain facts by a jury impannelled by the sheriff for the purpose; the instrument of writing on which their decision is made is also called an inquisition. The sheriff or coroner and the jury who make the inquisition, are called the inquest.

2. An inquisition on an untimely death, if omitted by the coroner, may be taken by justices of gaol delivery and oyer and terminer. or of the peace, but it must be done publicly and openly, otherwise it will be quashed. Inquisitions either of the coroner, or of the other jurisdictions, are traversable. 1 Burr. 18, 19.

INQUISITOR. A designation of sheriffs, coroners, super visum corporis, and the like, who have power to inquire into certain matters.

2. The name, of an officer, among ecclesiastics, who is authorized to inquire into heresies, and the like, and to punish them. An ecclesiastical judge.

INROLLMENT. The act of putting upon a roll. Formerly, the record of a suit was kept on skins of parchment, which, best to preserve them, were kept upon a roll or in the form of a roll; what was written upon them was called the inrollment. After, when such records came to be kept in books, the making up of the record retained the old name of inrollment.

INSANE. One deprived of the use of reason, after he has arrived at the age when he ought to have it, either by a natural defect or by accident. Domat, Lois Civ. Lib. prel. tit. 2, s. 1, n. ll.

INSANITY, med. jur. A continued impetuositv of thought, which, for the time being, totally unfitsga man for judging and acting in relation to the matter in question, with the composure requisite for the maintenance of the social relations of life. Various other definitions of this state have been given, but perhaps the subject is not susceptible of any satisfactory definition, which shall, with, precision, include all cases of insanity, and exclude all others. Ray, Med. Jur. _24, p. 50.

2. It may be considered in a threefold point of view: 1. A chronic disease, manifested by deviations from the healthy and natural state of the mind, such deviations consisting in a morbid perversion of the feelings, affections and habits. 2. Disturbances of the intellectual faculties, under the influence of which the understanding becomes susceptible of hallucinations or erroneous. impressions of a particular kind. 3. A state of mental incoherence or constant hurry and confusion of thought. Cyclo. Practical Medicine, h. t.; Brewster's Encyclopaedia, h. t.; Observations on the Deranged Manifestations of the Mind, or Insanity, 71, 72; Merl. R,pert. mots Demenoe, Folie, Imbecilite; 6 Watts & Serg. 451.

3. The diseases included under the name of insanity have been arranged under two divisions, founded on two very different conditions of the brain. Ray, Med. Jur. ch. 1, _33.

4. − 1. The want of, or a defective development of the faculties. 1st. Idiocy, resulting from, 1. Congenital defect. 2. An obstacle to the development of the faculties, supervening in infancy. 2d. Imbecility, resulting from, 1. Congenital defects. 2. An obstacle to the development of the faculties, supervening in infancy.

5. − 2. The lesion of the faculties subsequent to their development. In this division may be classed, 1st. Mania, which is, 1. Intellectual, and is general or partial. 2. Affective and is general or, partial. 2d. Dementia, which is, 1. Consecutive to mania, or injuries of the brain. 2. Senile, or peculiar to old age.

6. − There is also a disease which has acquired the name of Moral insanity. (q. v.)

7. Insanity is an excuse for the commission of acts which in others would be crimes, because the insane man has no intention; it deprives a man also from entering into any valid contract. Vide Lunacy; Non compos mentis, and Stock on the Law of Non Compotes Mentis; 1 Hagg. Cons. R. 417; 3 Addams, R. 90, 91, 180, 181; 3 Hagg. Eccl. R. 545, 598, 600; 2 Greenl. Ev. _369, 374; Bouv. Inst. Index, h. t.

INSCRIPTION, civil law. An engagerment which a person, who makes a solemn accusation of a crime against another, enters into, that he will suffer the same punishment, if he has accused, the other falsely, which would have been inflicted upon him had he been guilty. Code, 9, 1, 10; Id. 9, 2, 16 and 17.

INSCRIPTION, evidence. Something written or engraved.

2. Inscriptions upon tombstones and other proper places, as rings, and the like, are held to be evidence of pedigree. Bull. N. P. 233 Cowp. 591; 10 East, R. 120 13 Ves. 145 Vin. Ab. Ev. T. b. 87: 3 Stark. Ev. 116.

INSCRIPTIONES. The name given by the old English law to any written instrument by which anything was granted. Blount.

INSENSIBLE. In the language of pleading, that which is unintelligible is said to be insensible. Stepb. Pl. 378.

INSIDIATORES VIARUM. Persons who lie in wait, in order to commi some felony or other misdemeanor.

INSMUL. Together; jointly. This word is used in composition; as, insimulcomputassent; non tenent insimul.

INSIMUL COMPUTASSENT, practice, actions. They accounted together.

2. When an account has been stated, and a balance ascertained between the parties, they are said to have computed together, and the amouut due may be recovered in an action of assumpsit, which could not have been done, if the defendant had been the mere bailiff or partner of the plaintiff, and there had been no settlement made; for in that case, the remedy would be an action of account render, or a bill in chancery. It is usual in actions of assumpsit, to add a count commonly called insimul computassent, or an account stated. (q. v.) Lawes on Pl. in Ass. 488.

INSINUATION, civil law. The transcription of an act on the public registers, like our recording of deeds. It was not necessary in any other alienation, but that appropriated to the purpose of donation. Inst. 2, 7, 2; Poth. Traite des Donations, entre vifs, sect. 2, art. 3, _3; Encyclopedie; 8 Toull. n. 198.

INSOLVENCY. The state or condition of a person who is insolvent. (q. v.) .

2. Insolvency may be simple or notorious. Simple insolvency is the debtor's inability to pay his debts; and is attended by no legal badge of notoriety, or promulgation. Notorious insolvency is that which is designated by some public act, by which it becomes notorious and irretrievable, as applying for the benefit of the insolvent laws, and being discharged under the same.

3. Insolvency is a term of more extensive signification than bankruptcy, and includes all kinds of inability to pay a just debt. 2 Bell's Commentaries, 162, 6th ed.

INSOLVENT. This word has several meanings. It signifies a person whose estate is not sufficient to pay his debts. Civ. Code of Louisiana, art. 1980.. A person is also said to be insolvent, who is under a present inability to answer, in the ordinary course of business, the responsibility which his creditors may enforce, by recourse to legal measures, without reference to his estate proving sufficient to pay all his debts, when ultimately wound up. 3 Dowl. & Ryl. Rep. 218; 1 M aule & Selw. 338; 1 Campb. it. 492, n.; Sugd. Vend. 487, 488. It signifies the situation of a person who has done some notorious act to divest himself of all his property, as a general assignment, or an application for relief, under bankrupt or insolvent laws. 1 Peters' R. 195; 2 Wheat. R. 396; 7 Toull. n. 45; Domat, liv. 4, t. 5, n. 1 et 2; 2 Bell's Com. 162, 5th ed.

2. When an insolvent delivers or offers to deliver up all his property for the benefit of his creditors, he is entitled to be discharged under the laws of the, several states from all liability to be arrested. Vide 2 Kent, Com. 321 Ingrah. on Insolv. 9; 9 Mass. R. 431; 16 Mass. R. 53.

3. The reader will find the provisions made by the national legislature on this subject, by a reference to the following acts of congress, namely: Act of March 3, 1797, 1 Story, L. U. S. 465; Act of March 2, 1799; 1 Story, L. S. 630; Act of March 2, 1831, 4 Sharsw. Cont. of Story, L. U. S. 2236; Act of June 7, 1834, 4 Sharsw. Cont. of Story, L. U. S. 2358; Act of March 2, 1837, 4 Sharsw. Cont. of Story, L. U. S. 2536. See Bankrupt.

INSPECTION, comm. law. The examination of certain articles made by law subject to such examination, so that they may be declared fit for commerce. The decision of the inspectors is not final; the object' of the law is to protect the community from fraud, and to preserve the character of the merchandise abroad. 8 Cowen, R. 45. See 1 John. 205; 13 John. R. 331; 2 Caines, R. 312; 3 Caines, R. 207.

INSPECTION, practice. Examination. 2. The inspection of all public records is free to all persons who have an

interest in them, upon payment of the usual fees. 7 Mod. 129; 1 Str. 304; 2 Str. 260, 954, 1005. But it seems a mere stranger who has no such interest, has no right, at common law. 8 T. R. 390. Vide Trial by insection.

INSPECTOR. The name given to certain officers whose duties are to examine and inspect things over which they have jurisdiction; as, inspector of bark , one who is by law authorized to examine bark for exportation, and to approve or disapprove of its quality. Inspectors of customs are officers appointed by the general government: as to their duties, see Story's L. U. S. vol. 1, 590, 605, 609, 610, 612, 619, 621, 623, 650; ii. 1490, 1516; iii. 1650, 1790.

INSPEXIMUS. We have seen. A word sometimes used in letters−patent, reciting a grant, inspeximus such former grant, and so reciting it verbatim; it then grants such further privileges as are thought convenient. 5 Co. 54.

INSTALLATION or INSTALMENT. The act by which an officer is put in public possession of the place he is to fill. The president of the United States, or a governor, is installed into office, by being sworn agreeably to the requisition of the constitution and laws. Vide Inavguration.

INSTALMENT, contracts. A part of a debt due by contract, and agreed to be paid at a time different from that fixed for the, payment of the other part. For example, if I engage to pay you one thousand dollars, in two payments, one on the first clay of January, and the other on the first day of July, each of these payments or obligations to pay will be an instalment .

2. In such case each instalment is a separate debt so far that it may be tendered at any time, or the first may be sued for although the other shall not be due. Dane's Ab. vol. iii. ch. 93, art. 3, s. 11, page 493, 4; 1 Esp. R. 129; Id. 226; 3 Salk. 6, 18: Esp. R. 235; 1 Maule & Selw. 706.

3. A debtor who by failing to pay three instalments of rent due on a lease would forfeit his estate, may, in order to save it, tender one instalment to prevent the forfeiture, although there may be two due at the time, and he is not bound to tender both. 6 Toull. n. 688.

INSTANCE, civil and French law. It signifies, generally, all sorts of actions and judicial demands. Dig. 44, 7, 58.

INSTANCE COURT, Eng. law. The English court of admiralty is divided into two distinct tribunals; the one having, generally, all the jurisdiction of the admiralty, except in prize cases, is called the instance court; the other, acting under a special commission, distinct from the usual commission given to judges of the admiralty, to enable the judge in time of war to assume the jurisdiction of prizes, and' called Prize court.

2. In the United States, the district courts of the U. S. possess all the powers of courts of admiralty, whether considered as instance or prize courts. 3 Dall. R. 6. Vide 1 Gall. R. 563; Bro. Civ. & Adm. Law, ch. 4 & 5; 1 Kent, Com. 355, 378. Vide Courts of the United States; Prize Court.

INSTANT. An indivisible space of time.

2. Although it cannot be actually divided, yet by intendmeent of law, it may be applied to several purposes; for example, he who lays violent hands upon himself, commits no felony till he is dead, and when he is dead he is not in being so as to be termed a felon; but he is so adjudged in law, eo instante, at the very instant this fact is done. Vin. Ab. Instant, A, pl. 2; Plowd. 258; Co. Litt. 18; Show. 415.

INSTANTER. Immediately; presently. This term, it is said, means that the act to which it applies, shall be done within twenty−four hours but a doubt has been suggested by whom is the account of the hours to be kept, and whether the term instanter as applied to the subject−matter may not be more properly taken to mean "before, the rising of the court," when the act is to be done in court; or, "before the shutting of the office the same night," when the act is to be done there. 1 Taunt. R. 343; 6 East, R. 587, n. e; Tidd's Pr. 3d ed. 508, n.; 3 Chit. Pr. 112. Vide, 3 Burr. 1809; Co. Litt. 157; Styles' Register, 452.

INSTAR. Likeness; resemblance; equivalent as, instar dentium, like teeth; instar omnium, equivalent to all.

INSTIGATION. The act by which one incites another to do something, as to injure a third person, or to commit some crime or misdemeanor, to coramence a suit or to prosecute a criminal. Vide Accomplice.

INSTITOR, civ. law. A clerk in a store an agent.

2. He was so called because he watched over the business with which he was charged; and it is immaterial whether he was employed in making a sale in a store, or whether charged with any other business. Institor appellatus est ex eo, quod negotio gerendo instet; nec multum facit tabernae sit praepositus, an cuilibet alii negotiationi. Dig. lib. 14, tit. 3, l. 3. Mr., Bell says, that the charge given to a clerk to manage a store or shop, is called institorial power. 1 Bell's Com. 479, 6th ed.; Ersk. Inst. B. 3, t. 3, _46; 1 Stair's Inst. by Brodie, B. 1, tit. 11, __12, 18, 19; Story on Ag. 8.

INSTITUTE, Scotch law. The person first called in the tailzie; the rest, or the heirs of tailzie, are called substitutes. Ersk. Pr. L. Scot. 3, 8, 8. See Tailzie, Heir of; Substitutes.

2. In the civil law, an inastitute is one who is appointed heir by testament, and is required to give the estate devised to another person, who is called the substitute.

TO INSTITUTE. To name or to make an heir by testament. Dig. 28, 5, 65. To make an accusation; to commence an action.

INSTITUTES. The principles or first elements of jurisprudence.

2. Many books have borne the title of Institutes. Among the most celebrated in the common law, are the Institutes of Lord Coke, which, however, on account of the want of arrangement and the diffusion with which his books are written, bear but little the character of Institutes; in the, civil law the most generally known are those of Caius, Justinian, and Theophilus.

3. The Institutes of Caius are an abridgment of the Roman law, composed by the celebrated lawyer Caius or Gaius, who lived during th e reign of Marcus Aurelius.

4. The Institutes of Justinian, so called, because they are, as it were, masters and instructors to the. ignorant, and show an easy way to the obtaining of the knowledge of the law, are an abridgment of the Code and of the Digest, composed by order of that emperor: his intention in this composition was to give a summary knowledge of the law to those persons not versed in it, and particularly to merchants. The lawyers employed to make this book, were Tribonian, Theophilus, and Dorotheus. The work was first published in the year 533, and received the sanction of statute law, by order of the emperor. The Institutes of Justinian are divided into four books: each book is divided into two titles, and each title into parts. The first part is called principium, because it is the commencement of the title; those which follow are numbered and called paragraphs. The work treats of the rights of persons, of things, and of actions. The first book treats of persons; the second, third, and the first five titles of the fourth book, of things; and the remainder of the fourth book, of actions. This work has been much admired on account of its order and Scientific arrangement, which presents, at a single glance, the whole jurisprudence of the Romans. It is too little known and studied. The late Judge Cooper, of Pennsylvania, published an edition with valuable notes.

5. The Institutes of Theophilus are a paraphrase of those of Justinian, composed in Greek, by a lawyer of that name, by order of the emperor Phocas. Vide 1 Kent, Com. 538; Profession d'Avocat tom. ii. n. 536, page 95; Introd. a l'Etude du Droit Romain, p. 124; Dict. de Jurisp. h. t.; Merl. R,pert. h. t.; Encyclop,die de d'Alembert, h. t.

INSTITUTION, eccl. law. The act by which the ordinary commits the cure of souls to a person presented to a benefice.

INSTITUTION, political law. That which has been established and settled by law for the public good; as, the American institutions guaranty to the citizens all privileges and immunities essential to freedom.

INSTITUTION, practice. The commencement of an action; as, A B has instituted a suit against C D, to recover damages for a trespass.

INSTITUTION OF HEIR, civil law. The act by which a testator nominates one or more persons to succeed him in all his rights, active and passive. Poth. Tr. des Donations Testamentaires, c. 2, s. 1, _1; Civ. Code of Lo. art. 1598; Dig. lib. 28, tit. 5, l. 1; and lib. 28, tit. 6, l. 2, _4.

INSTRUCTION, French law. This word signifies the meaus used and formality employed to prepare a case for trial. it is generally applied to criminal cases, and is then called criminal, instruction; it is then defined the acts and proceedings which tend to prove positively a crime or delict, in order to inflict on the guilty person the punishment which he deserves.

INSTRUCTIONS, com. law, Contracts. Orders given by a principal to his agent in relation to the business of his agency.

2. The agent is bound to obey the instructions he has received and when he neglects so to do, he is responsible for the consequences, unless he is justified by matter of necessity. 4 Binn. R. 361; 1 Liverm. Agency, 368.

3. Instructions differ materially from authority, as regards third persons. When a written authority is known to exist, or, by the nature of the transaction, it is presupposed, it is the duty of persons dealing with an agent to ascertain the nature and extent of his authority; but they are not required to make inquiry of the agent as to any private instructions from his principal, for the obvious reason that they may be presumed to be secret and of a confidential nature, and therefore not to be communicated to third persons. 5 Bing. R. 442.

4. Instructions are given as applicable to the usual course of things, and are subject to two qualifications which

are naturally, and perhaps necessarily implied in every mercantile agency. 1. As instructions are applicable only to the ordinary course of affairs, the agent will be justified, in cases of extreme necessity and unforeseen emergency, in deviating from them; as, for example, when goods on hand are perishable and perishing, or when they are accidentally injured and must be sold to prevent further loss; or if they are in imminent danger of being lost by the capture of the port where they are, they may be transferred to another port. Story on Ag. _85, 118, 193; 3 Chit. Com. Law, 218; 4 Binn. 361; 1 Liverm. on Ag. 368. 2. Instructions must be lawful; if they are given to perform an unlawful act, the agent is not bound by them. 4 Campb. 183; Story on Ag. _195. But the lawfulness of such instruction does not relate to the laws of foreign countries. Story, Confl. of Laws, _245; 1 Liverm. on Ag. 15−19. As to the construction of letters of instruction, see 3 Wash. C. C. R. 151; 4 Wash. C. C. R. 551; 1 Liv. on Ag. 403; Story on Ag. _74; 2 Wash. C. C. R. 132; 2 Crompt. & J. 244; 1 Knapp,, R. 381.

INSTRUCTIONS, practice. The statements of a cause of action, given by a client to his attorney, and which, where such is the practice, are sent to his pleader to put into legal form of a declaration. Warr. Stud. 284.

2. Instructions to counsel are their indemnity for any aspersions they may make on the opposite party; but attorneys who have a just regard to their own reputation will be cautious, even under instructions, not to make any unnecessary attack upon a party or witness. For such unjustifiable conduct the counsel will be held responsible. Eunom. Dial. 2, _43, p. 132. For a form of instructions, see 3 Chit. Pr. 117, and 120 n.

INSTRUMENT, contracts. The writing which contains some agreement, and is so called because it has been prepared as a memorial of what has taken place or been agreed upon. The agreement and the instrument in which it is contained are very different things, the latter being only evidence of the existence of the former. The instrument or form of the contract may be valid, but the contract itself may be void on account of fraud. Vide Ayl. Parerg. 305; Dunl. Ad. Pr. 220.

INSTRUMENTA. This word is properly applied to designate that kind of evidence, which consists of writings not under seal, as court rolls, accounts, and the like. 3 Tho. Co. Litt. 487.

INSULA, Latin. An island. In the Roman law the word is applied to a house not connected with other houses, but separated by a surrounding space of ground. Calvini Lex; Vicat, Vocab. ad voc.

INSUFFICIENCY. What is not competent; not enough.

INSUPER, Eng. law. The balance due by an accountant in the exchequer, as apparent by his account. The auditors in settling his account say there remains so much insuper to such accountant.

INSURABLE INTEREST. That right of property which may be the subject of an insurance.

2. The policy of commerce, and the various complicated rights which different persons may have in the same thing, require that not only those who have an absolute property in ships or goods, but those also who, have a qualified property in them, may be at liberty to insure them. For example, when a ship is mortgaged, and the mortgage has become absolute, the owner of the legal estate has an insurable interest, and the mortgagor, on account of his equity, has also an insurable interest. 1 Burr. 489. See 20 Pick. 259; 1 Pet. 163.

INSURANCE, contracts. It is defined to be a contract of indemnity from loss or damage arising upon an uncertain event. 1 Marsh. Ins. 104. It is more fully defined to be a contract by which one of the parties, called the insurer, binds himself to the other, called the insured, to pay him a sum of money, or otherwise indemnify him in case of the happening of a fortuitous event, provided for in a general or special manner in the contract, in consideration of a premium which the latter pays, or binds himself to pay him. Pardess. part 3, t. 8, n. 588; 1 Bouv. Inst. n. 1174.

2. The instrument by which the contract is made is denominated a policy; the events or causes to be insured against, risks or perils; and the thing insured, the subject or insurable interest.

3. Marine insurance relates to property and risks at sea; insurance of property on shore against fire, is called fire insurance; and the various contracts in such cases, are fire policies. Insurance of the lives of individuals are called insurances on lives. Vide Double Insurance; Re−Insurance.

INSURANCE AGAINST FIRE. A contract by which the insurer, in consequence of a certain premium received by him, either in a gross sum or by annual *payments, undertakes to indemnify the insured against all loss or damage which he may sustain to a certain amount, in his house or other buildings, stock, goods, or merchandise, mentioned in the policy, by fire, during the time agreed upon. 2 Marsh. Ins. B. 4, p. 784; 1 Stuart’s L. C. R. 174; Park. Ins. c. 23, p., 441.

2. The risks and losses insured against, are "all losses or damage by fire," during the time of the policy, to the houses or things insured.

3. − 1. There must be an actual fire or ignition to entitle the insured to recover; it is not sufficient that there has been a great and injurious increase of heat, while nothing has taken fire, which ought not to be on fire. 4 Campb. R. 360.

4. − 2. The loss must be within the policy, that is, within the time insured. 5 T. R. 695; 1 Bos. & P. 470; 6 East, R. 571.

5. − 3. The insurers are liable not only for loss by burning, but for all damages and injuries, and reasonable charges attending the removal of articles though never touched by the fire. 1 Bell's Com. 626, 7, 5th ed.

6. Generally there is an exception in the policy, as to fire occasioned "by invasion, foreign enemy, or any military, or usurped power whatsoever," and in some there is a further exception of riot, tumult, or civil commotion. For the Construction of these provisoes, see the articles Civil Commotion and Usurped Power.

INSURANCE, MARINE, contracts. Marine insurance is a contract whereby one party, for a stipulated premium, undertakes to indemnify the other against certain perils or sea risks, to which his ship, freight, or cargo, or some of them may be exposed, during a certain voyage, or a fixed period of time. 3 Kent, Com. 203; Boulay−Paty, Dr. Commercial, t. 10.

2. This contract is usually reduced to writing; the instrument is called a policy of insurance. (q. v.)

3. All persons, whether natives, citizens, or aliens, may be insured, with the exception of alien enemies.

4. The insurance may be of goods on a certain ship, or without naming any, as upon goods on board any ship or ships. The subject insured must be an insurable legal interest.

5. The contract requires the most perfect good faith; if the insured make false representations to the insurer, in order to procure his insurance upon better terms, it will avoid the contract, though the loss arose from a cause unconnected with the misrepresentation, or the concealment happened through mistake, neglect, or accident, without any fraudulent intention. Vide Kent, Com. Lecture, 48; Marsh. Ins. c. 4; Pardessus, Dr. Com. part 4, t. 5, n. 756, et seq.; Boulay−Paty, Dr. Com. t. 10.

INSURANCE ON LIVES, contracts. The insurance of a life is a contract whereby the insurer, in consideration of a certain premium, either in a gross sum or periodical payments, undertakes to pay the person for whose benefit the insurance is made, a stipulated sum, or an annuity equivalent thereto, upon the death of the person whose life is insured, whenever this shall happen, if the insurance be for the whole life, or in case this shall happen within a certain period if the insurance be for a limited time. 2 Marsh. Ins. 766; Park on Insurance, 429.

2. The insured is required to make a representation or declaration, previous to the policy being issued, of the age and state of health of the person whose life is insured and the party making it is bound to the truth of it. Park, Ins. 650; Marsh. Ins. 771; 4 Taunt. R. 763.

3. In almost every life policy there are several exceptions, some of them applicable to all cases, others to the case of insurance of one's life. The exceptions are, 1. Death abroad, or at sea. 2. Entering into the naval or military service without the previous consent of the insurers. 3. Death by suicide. 4. Death by duelling. 5. Death by the hand of justice. The last three are not understood to be excepted when the insurance is on another's life. 1 Bell's Com. 631, 5th ed. See 1 Beck's Med. Jur. 518.

INSURED, contracts. The person who procures an insurance on his property.

2. It is the duty of the insured to pay the premium, and to represent fully and fairly all the circumstances relating to the subject−matter of the insurance, which may influence the determination of the underwriters in undertaking the risk, or estimating the premium. A concealment of such facts amounts to a fraud, which avoids the contract. 1 Marsh. Ins. 464; Park, Ins. h. t.

INSURER, contracts. One who has obliged himself to insure the safety of another's property, in consideration of a premium paid, or secured to be paid, to hi.m. It is his duty to pay any loss which has arisen on the property insured. Vide Marsh. Ins. Index,.h. t.; Park. Ins. Index, h. t. Phill. Ins. h. t.; Wesk. Ins. h. t.; Pardess. Index, art. Assureur.

INSURGENT. One who is concerned in an insurrection. He differs from a rebel in this, that rebel is always understood in a bad sense, or one who unjustly opposes the constituted authorities; insurgent may be one who justly opposes the tyranny of constituted authorities. The colonists who opposed the tyranny of the English government were insurgents, not rebels.

INSURRECTION. A rebellion of citizens or subjects of a country against its government.

2. The Constitution of the United States, art. 1, s. 8. gives power to congress " to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions."

3. By the act of Congress of the 28th of February, 1795, 1 Story's L. U. S. 389, it is provided: _1. That whenever the United States shall be invaded, or be in imminent danger of invasion, from any foreign nation or Indian tribe, it shall be lawful for the president of the United States to call forth such number, of the militia of the state, or states, most convenient to the place of danger, or scene of action, as he may judge necessary to repel such invasion, and to issue his orders, for that purpose, to such officer or officers of the militia as be shall think proper. And in case of an insurrection in any state, against the government thereof, it shall be lawful for the president of the United States, on application of the legislature of such state, or of the executive, (when the legislature cannot be convened,) to call forth such number of the militia of any other state or states, as may be applied for, as he may judge sufficient to suppress such insurrection.

4. − _2 That, whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any state, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act, it shall be lawful for the president of the United States to call forth the militia of such state, or of any other state or states, as may be necessary to suppress such combinations, and to cause the laws to be duly executed; and the use of militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of congress.

5. − 3. That whenever it may be necessary, in the judgment of the president, to use the military force hereby directed to be called forth, the president shall forthwith, by proclamation, command such insurgents to disperse, and retire peaceably to their respective abodes, within a limited time.

INTAKERS, Eng. law. The time given to receivers of goods stolen in Scotland, who take them to England. 9 H. V. c. 27.

INTEGER. Whole, untouched. Res integra means a question which is new and undecided. 2 Kent, Com. 177.

INTENDED TO BE RECORDED. This phrase is frequently used in conveyancing, in deeds which recite other deeds which have not been recorded. In Pennsylvania, it has been construed to be a covenant, on the part of the grantor, to procure the deed to be recorded in a reasonable time. 2 Rawle's Rep. 14.

INTENDANT. One who has the charge, management, or direction of some office, department, or public business.

INTENDMENT OF LAW. The true meaning, the correct understanding, or intention of the law; a presumption or inference made by the courts. Co. Litt. 78. 2. It is an intendment of law that every man is innocent until proved guilty, vide Innocence; that every one will act for his own advantage, vide Assent; Fin. Law, 10, Max. 54; that every officer acts in his office with fidelity that the children of a married woman, born during the coverture, are the children of the hushand, vide Bastardy; many things are intended after verdict, in order to support a judgment, but intendment cannot supply the want of certainty in a charge in an indictment for a crime. 5 Co. 1 21; vide Com. Dig. Pleader, C 25, and S 31; Dane's Ab. Index, h. t.; 14 Vin. Ab. 449; 1 Halst. 132; 1 Harris. 133.

INTENTION. A design, resolve, or determination of the mind.

2. Intention is required in the commission of crimes and injuries, in making contracts, and wills.

3. − 1. Every crime must have necessarily two constituent parts, namely, an act forbidden by law, and an intention. The act is innocent or guilty just as there was or was not an intention to commit a crime; for example, a man embarks on board of a ship, at New York, for the purpose of going to New Orleans; if he went with an intention to perform a lawfull act, he is perfectly innocent; but if his intention was to levy war against the United States, he is guilty of an overt act of treason. Cro. Car. 332; Fost. 202, 203; Hale, P. C. 116. The same rule prevails in numerous civil cases; in actions founded on malicious injuries, for instance, it is necessary to prove that the act was accompanied, by a wrongful and malicious intention. 2 Stark. Ev. 739. 4. The intention is to be proved, or it is inferred by the law. The existence of the intention is usually matter of inference; and proof of external and visible acts and conduct serves to indicate, more or less forcibly, the particular intention. But, in some cases, the inference of intention necessarily arises from the facts. Exteriora acta indicant interiora animi secreta. 8 Co. 146. It is a universal rule, that a man shall be taken to intend that which he does, or which is the necessary and immediate consequence of his act; 3 M. & S. 15; Hale, P. C. 229; in cases of homicide, therefore, malice will generally be inferred by the law. Vide Malice' and Jacob's Intr. to the Civ. Law, Reg. 70; Dig. 24, 18.

5. But a bare intention to commit a crime, without any overt act towards its commission, although punishable in foro, conscientiae, is not a crime or offence for which the party can be indicted; as, for example, an intention to pass counterfeit bank notes, knowing them to be counterfeit. 1 Car. Law Rep. 517.

6. − 2. In order to make a contract, there must, be an intention to make it a person non compos mentis, who has

no contracting mind, cannot, therefore, enter into any engagement which requires an intention; for to make a contract the law requires a fair, and serious exercise of the reasoning faculty. Vide Gift; Occupancy.

7. − 3. In wills and testaments, the intention of the testator must be gathered from the whole instrument; 3 Ves. 105; and a codicil ought to be taken as a part of the will; 4 Ves. 610; and when such intention is ascertained, it must prevail, unless it be in opposition to some unbending rule of law. 6 Cruise's Dig. 295; Rand. on Perp. 121; Cro. Jac. 415. " It is written," says Swinb. p. 10, " that the will or meaning of the testator is the queen or empress of the testament; because the will doth rule the testament, enlarge and restrain it, and in every respect moderate and direct the same, and is, indeed, the very efficient cause. thereof. The will, therefore, and meaning of the testator ought, before all things, to be sought for diligently, and, being found, ought to be observed faithfully." 6 Pet. R. 68. Vide, generally, Bl. Com. Index, h. t.; 2 Stark. Ev. h. t.; A 1. Pand. 95; Dane's Ab. Index h. t.; Rob. Fr. Conv. 30. As to intention in changing a residence, see article Inhabitant.

INTER. Between, among; as, inter vivos, between living persons; inter alia, among others.

INTER ALIA. Among other things; as, "the said premises, which inter alia, Titius granted to Caius."

INTER ALIOS. Between other parties, who are strangers to the proceeding in question.

INTERCOMMONING, Eng. law. Where the commons of two manors lie together, and the inhabitants, or those having a right of common of both, have time out of mind depastured their cattle, without any distinction, this is called intercommoning.

INTER CANEM ET LUPUM. Literally, between the dog and the wolf. Metaphorically, the twilight; because then the dog seeks his rest, and the wolf his prey. 3 Inst. 63.

INTER PARTES. This, in a technical sense, signifies an agreement professing in the outset, and before any stipulations are introduced, to be made between such and such persons as, for example, " This Indenture, made the _____ day of _____ 1848, between A B of the one part, and C D of the other." It is true that every contract is in one sense inter partes, because to be valid there must be two parties at least; but the technical sense of this expression is as above mentioned. Addis. on Contr. 9.

2. This being a solemn declaration, the effect of such introduction. is to make all the covenants, comprised in a deed to be covenants between the parties and none others; so that should a stipulation be found in the body of a deed by which "the said A B covenants with E F to pay him one hundred dollars," the words "with E F" are inoperative, unless they have been used to denote for whose benefit the stipulation may have been made, being in direct contradiction with what was previously declared, and C D alone can sue for the non−payment; it being a maxim that where two opposite intentions are expressed in a contract, the first in order shall prevail. 8 Mod. 116; 1 Show. 58; 3 Lev. 138; Carth. 76; Roll. R. 196; 7 M. & IV. 63; But this rule does not 'apply to simple contracts inter partes. 2 D . & R. 277; 3 D. & R. 273 Addis. on Contr. 244, 256.

3. When there are more than two sides to a contract inter partes, for example, a deed; as when it is made between A B, of the first part; C D, of the second; and E F, of the third, there is no objection to one covenanting with another in exclusion of the third. See 5 Co. 182; 8 Taunt. 245; 4 Ad. & Ell. N. S. 207; Addis. on Contr. 267.

INTER SE INTER SESE. Among themselves. Story on Part _405.

INTER VIVOS. Between living persons; as, a gift inter vivos, which is a gift made by one living person to another; see Gifts inter vivos. It is a rule that a fee cannot pass by grant or transfer, inter vivos, without appropriate words of inheritance. 2 Prest. on Est. 64.

INTERCOURSE. Communication; commerce; connexion by reciprocal dealings between persons or nations, as by interchange of commodities, treaties, contracts, or letters.

INTERCHANGEABLY. Formerly when deeds of land were made, where there Were covenants to be performed on both sides, it was usual to make two deeds exactly similar to each other, and to exchange them; in the attesting clause, the words, In witness whereof the parties have hereunto interchangeably set their hands," &c., were constantly inserted, and the practice has continued, although the deed is, in most cases, signed by the grantor only. 7 Penn. St. Rep. 320.

INTERDICT, civil Among the Romans it was an ordinance of the praetor, which forbade or enjoined the parties in a suit to do something particularly specified, until it should be decided definitely who had the right in relation to it. Like an injunction, the interdict was merely personal in its effects and it had also another similarity to it, by being temporary or perpetual. Dig. 43, 1, 1, 3, and 4. See Story, E Jur. 865; Halif. Civ. Law, ch. 6 Vicat, Vocab. h. v.; Hein. Elem. Pand. Ps. 6, _285. Vide Injunction.

INTERDICT, OR INTERDICTION, eccles. law. An ecclesiastical censure, by which divine services are

prohibited either to particular persons or particular places. These tyrannical edicts, issued by ecclesiastical powers, have never been in force in the United States.

INTTERDICTED OF FIRE AND WATER. Formerly those persons who were banished for some crime, were interdicted of fire and water; that is, by the judgment order was given that no man should receive them into his house, but should deny them fire and water, the two necessary elements of life.

INTERDICTION, civil law. A legal restraint upon a person incapable of managing his estate, because of mental incapacity, from signing any deed or doing any act to his own prejudice, without the consent of his curator or interdictor.

2. Interdictions are of two kinds, voluntary or judicial. The first is usually executed in the form of an obligation by which the obligor binds himself to do no act which may affect his estate without the consent of certain friends or other persons therein mentioned. The latter, or judicial interdiction, is imposed by a sentence of a competent tribunal, which disqualifies the party on account of imbecility, madness, or prodigality, and deprives the person interdicted of the right to manage his affairs and receive the rents and profits of his estate.

3. The Civil Code of Louisiana makes the following provisions on this subject: Art. 382. No person above the age of majority, who is subject to an habitual state of madness or insanity, shall be allowed to take charge of his own person or to administer his estate, although such person shall, at times, appear to have the possession of his reason.

4. − 383. Every relation has a right to petition for the interdiction of a relation; and so has every hushand a right to petition for the interdiction of his wife, and every wife of her hushand.

5.− 384. If the insane person has no relations and is not married, or if his relations or consort do not act, the interdiction may be solicited by any stranger, or pronounced ex officio by the judge, after having heard the counsel of the person whose interdiction is prayed for, whom it shall be the, duty of the judge to name, if one be not already named, by the party.

385. Every interdiction shall be pronounced by the judge of the parish of the domicil or residence of the person to be interdicted.

386. The acts of madness, insanity or fury, must be proved to the satisfaction of the judge, that he may be enabled to pronounce the interdiction, and this proof may be established, as well by written as by parol evidence and the judge may moreover interrogate or cause to be interrogated by any other person commissioned by him for that purpose, the person whose interdiction is petitioned for, or cause such person to be examined by pbysicians, or other skilful persons, in order to obtain their report upon oath on the real situation of him who is stated to be of unsound mind.

387. Pending the issue of the petition for interdiction the judge may, if he deems it proper, appoint for the preservation of the movable, and for the administration of the immovable estate of the defendant, an administrator pro tempore.

388. Every judgment, by which an interdiction is renounced, shall be provisionally executed, notwithstanding the appeal.

389. In case of appeal, the appellate court may, if they deem it necessary, proceed to the hearing of new proofs, and question or cause to be questioned, as above provided, the person whose interdiction is petitioned for, in order to ascertain the state of his mind.

390. On every petition for interdiction, the cost shall be paid out of the estate of the defendant, if he shall be interdicted, and by the petitioner, if the interdiction prayed for shall not be pronounced.

391. Every sentence of interdiction shall be published three times, in at least two of the newspapers printed in New Orleans, or made known by advertisements at the door of the court−house of the parish of the domicil of the person interdicted, both in the French and English languages; and this duty is imposed upon him who shall be appointed curator of the person interdicted, and shall be performed within a month after the date of the interdiction, under the penalty of being answerable for all damages to such persons as may, through ignorance, have contracted with the person interdicted.

392. No petition for interdiction, if the same shall have once been rejected, shall be acted upon again, unless new facts, happening posterior to the sentence, shall be alleged.

393. The interdiction takes place from the day of presenting the petition for the same.

394. All acts done by the person interdicted, from the date of the filing the petition for interdiction until the day when the same is pronounced, are null.

395. No act anterior to the petition for the interdiction, shall be annulled except where it shall be proved that the cause of such interdiction notoriously existed at the time when the deeds, the validity of which is contested, were made, or that the party who contracted with the lunatic or insane person, could not have been deceived as to the situation of his mind. Notoriously, in this article, meaus that the insanity was generally known by the persons who saw and conversed with the party.

396. After the death of a person, the validity of acts done by him cannot be contested for cause of insanity, unless his interdiction was pronounced or petitioned for, previous to the death of such person, except in cases in which mental alienation manifested itself within ten days previous to the decease, or in which the proof of the want of reason results from the act itself which is contested.

397. Within a month, to reckon from the date of the judgment of interdiction, if there has been no appeal from the same, or if there has been an appeal, then within a month from the confirmative sentence, it shall be the duty of the judge of the palish of the doimcil or residence of the person interdicted, to appoint a curator to his person and estate.

398. This appointment is made according to the same forms as the appointment to the tutorship of minors. After the appointment of the curator to the person interdicted, the duties of the administrator, pro tempore, if he shall not have been appointed curator, are at an end and he shall give an account of his administration to the curator.

399. The married woman, who is interdicted, is of course under the curatorship of her hushand. Nevertheless, it is the duty of the hushand, in such case, to cause to be appointed by the judge, a curator ad litem; who may appear for the wife in every case when she may have an interest in opposition to the interest of her hushand, or one of a nature to be pursued or defended jointly with his.

400. The wife may be appointed curatrix to her hushand, if she has, in other respects, the necessary qualifications. She is not bound to give security.

401. No one, except the hushand, with respect to his wife, or wife with respect to her hushand, the relations in the ascending line with respect to the relations in the descending line, and vice versa, the relations in the descending line with respect to the relations in the ascending line, can be compelled to act as curator to a person interdicted more than ten years, after which time the curator may petition for his discharge.

402. The person interdicted is, in every respect, like the minor who has not arrived at the age of puberty, both as it respects his person and estate; and the rules respecting the guardianship of the minor, concerning the oath, the inventory and the security, the mode of administering the sale of the estate, the commission on the revenues, the excuses, the exclusion or deprivation of the guardianship, mode of rendering the accounts, and the other obligations, apply with respect to the person interdicted.

403. When any of the children of the person interdicted is to be married, the dowry or advance of money to be drawn from his estate is to be regulated by the judge, with the advice of a family meeting.

404. According to the symptons of the disease, under which the person interdicted labors, and according to the amount of his estate, the judge may order that the interdicted person he attended in his own house, or that he be placed in a bettering−house, or indeed, if he be so deranged as to be dangerous, he may order him to be confined in safe custody.

405. The income of the person interdicted shall be employed in mitigating his sufferings, and in accelerating his cure, under the penalty against the curator of being removed in case of neglect.

406. He who petitions for the interdiction of any person, and fails in obtaining such interdiction, may be prosecuted for and sentenced to pay damages, if he shall have acted from motives of interest or passion.

407. Interdiction ends with the cause which gave rise to it. Nevertheless, the person interdicted cannot resume the exercise of his rights, until after the definite judgment by which a repeal of the interdiction is pronounced.

408. Interdiction can only be revoked by the same solemnities which were observed in pronouncing it.

6. − 409. Not only lunatics and idiots are liable to be interdicted, but likewise all persons who, owing to certain infirmities, are incapable of taking care of their persons and administering their estates.

7. Such persons shall be placed under the care of a curator, who shall be appointed and shall administer in conformity with the rules contained in the present chapter.

8. − 410. The person interdicted cannot be taken out of the state without a judicial order, given on the recommendation of a a family meeting, and on the opinion delivered under oath of at least two physicians, that they believe the departure necessary to the health of the person interdicted .

9. − 411. There shall be appointed by the judge a superintendent to the person interdicted whose duty it shall be

to inform the judge, at least once in three months, of the state of the health of the person interdicted, and of the manner in which he is treated.

10. To this end, the superintendent shall have free access to the person interdicted, whenever he wishes to see him.

11. − 412. It is the duty of the judge to visit the person interdicted, whenever, from the information he receives, he shall deem it expedient.

12. This visit shall be made at times when the curator is not present.

13. − 413. Interdiction is not allowed on account of profligacy or prodigality. Vide Ray's Med. Jur. chap. 25; 1 Hagg. Eccl. Rep. 401; Committee; Habitual Drunkard.

INTERESSE TERMINI, estates. An interest in the term. The demise of a term in land does not vest any estate in the lessee, but gives him a mere right of entry on the land, which right is called his interest in the term, or interesse termini. Vide Co. Litt. 46; 2 Bl. Com. 144; 10 Vin. Ab. 348; Dane's Ab. Index, h. t.; Watk. Prin. Com. 15.

INTEREST, estates. The right which a man has in a chattel real, and more particularly in a future term. It is a word of less efficacy and extent than estates, though, in legal understanding, an interest extends to estates, rights and titles which a man has in or out of lands, so that by a grant of his whole interest in land, a reversion as well as the fee simple shall pass. Co. Litt. 345.

INTEREST, contracts. The right of property which a man has in a thing, commonly called insurable interest. It is not easy to give all accurate definition of insurable interest. 1 Burr. 480; 1 Pet. R. 163; 12 Wend. 507 16 Wend. 385; 16 Pick. 397; 13 Mass. 61, 96; 3 Day, 108; 1 Wash. C. C. Rep. 409.

2. The policy of commerce and the various complicated. rights which different persons may have in the same thing, require that not only those who have an absolute property in ships and goods, but those also who have a qualified property therein, may be at liberty to insure them. For example, when a ship is mortgaged, after, the mortgage becomes absolute, the owner of the legal estate has an insurable interest, and the mortgagor, on account of his equity, has also an insurable interest. 2 T. R. 188 1 Burr. 489; 13 Mass. 96; 10 Pick. 40 and see 1 T. R. 745; Marsh. Ins. h. t.; 6 Meeson & Welshy, 224.

3. A man may not only insure his own life for the benefit of his heirs or creditors, and assign the benefit of this insurance to others having thus or otherwise an interest in his life, but be may insure the life of another in which he may be interested. Marsh. Ins. Index, h. t.; Park, Ins. Index, h. t.; 1 Bell's Com. 629, 5th ed.; 9 East, R. 72. Vide Insurance.

INTEREST, evidence. The benefit which a person has in the matter about to be decided and which is in issue between the parties. By the term benefit is here understood some pecuniary or other advantage, which if obtained, would increase the, witness estate, or some loss, which would decrease it.

2. It is a general rule that a party who has an interest in the cause cannot be a witness. It will be proper to consider this matter by taking a brief view of the thing or subject in dispute, which is the object of the interest; the quantity of interest; the quality of interest; when an interested witness can be examined; when the interest must exist; how an interested witness can be rendered competent.

3. − 1. To be disqualified on the ground of interest, the witness must gain or lose by the event of the cause, or the verdict must be lawful evidence for or against him in another suit, or the record must be an instrument of evidence for or against him. 3 John. Cas. 83; 1 Phil. Ev. 36; Stark. Ev. pt. 4, p. 744. But an interest in the question does not disqualify the witness. 1 Caines, 171; 4 John. 302; 5 John. 255; 1 Serg. & R. 82, 36; 6 Binn. 266; 1 H. & M. 165, 168.

4. − 2. The magnitude of the interest is altogether immaterial, even a liability for the most trifling costs will be sufficient. 5 T. R. 174; 2 Vern. 317; 2 Greenl. 194; 11 John. 57.

5. − 3. With regard to the quality, the interest must be legal, as contradistinguished from mere prejudice or bias, arising from relationship, friendship, or any of the numerous motives by which a witness may be supposed to be influenced. Leach, 154; 2 St. Tr. 334, 891; 2 Hawk. ch. 46, s. 25. It must be a present, certain, vested interest, and not uncertain and contingent. Dougl. 134; 2 P. Wms. 287; 3 S. & R. 132; 4 Binn. 83; 2 Yeates, 200; 5 John. 256; 7 Mass. 25. And it must have been acquired without fraud. 3 Camp. 380; l M. & S. 9; 1 T. R. 37.

6. − 4. To the general rule that interest renders a witness incompetent, there are some exceptions. First. Although the witness may have an interest, yet if his interest is equally strong on the other side, and no more, the witness is reduced to a state of neutrality by an equipoise of interest, and the objection to his testimony ceases. 7 T. R. 480,

481, n.; 1 Bibb, R. 298; 2 Mass. R. 108; 2 S. & R. 119; 6 Penn. St. Rep. 322.

7. Secondly. In some instances the law admits the testimony of one interested, from the extreme necessity of the case; upon this ground the servant of a tradesman is admitted to prove the delivery of goods and the payment of money, without any release from the master. 4 T. R. 490; 2 Litt. R. 27.

8. − 5. The interest, to render the witness disqualified, must exist at the time of his examination. A deposition made at a time when the witness had no interest, may be read in evidence, although he has afterwards acquired an interest. 1 Hoff. R. 21.

9. − 6. The objection to incompetency on the ground of interest may be removed by an extinguishment of that interest by means of a release, executed either by the witness, when he would receive an advantage by his testimony, or by those who have a claim upon him when his testimony would be evidence of his liability. The objection may also be removed by payment. Stark. Ev. pt. 4, p. 757. See Benth. Rationale of Jud. Ev. 628−692, where he combats the established doctrines of the law, as to the exclusion on the ground of interest; and Balance.

INTEREST FOR MONEY, contracts. The compensation which is paid by the borrower to the lender or b the debtor to the creditor for its use.

2. It is proposed to consider, 1. Who is bound to pay iuterest. 2. Who is entitled to receive it. 3. On what claim it is allowed. 4. What interest is allowed. 5. How it is computed. 6. When it will be barred. 7. Rate of interest in the different states.

3. _1. Who is bound to pay interest 1. The contractor himself, who has agreed, either expressly or by implication, to pay interest, is of course bound to do so.

4. − 2. Executors, administrators, assignees of bankrupts or of insolvents, and trustees, who have kept money an unreasonable length of time, and have made or who might have made it productive, are chargeable with interest. 2 Ves. 85; 1 Bro. C. C. 359; Id. 375; 2 Ch. Co. 235; Chan. Rep. 389; 1 Vern. 197; 2 Vern. 548; 3 Bro. C. C. 73; Id. 433; 4 Ves. 620; 1 Johns. Ch. R. 508; Id. 527, 535, 6; Id. 620; 1 Desaus. Ch. R. 193, n; Id. 208; 1 Wash. 2; 1 Binn. R. 194; 3 Munf. 198, Pl. 3: Id. 289, pl. 16; 1 Serg. & Rawle, 241, 4 Desaus. Ch. Rep. 463; 5 Munf. 223, pl. 7, 8; 1 Ves. jr. 236; Id. 452; Id. 89; 1 Atk. 90; see 1 Supp. to Ves. jr. 30; 11 Ves. 61; 15 Ves. 470; 1 Ball & Beat. 230; 1 Supp. to Ves. jr. 127, n. 3; 1 Jac. & Wall. 140; 3 Meriv. 43; 2 Bro. C.C. 156: 5 Ves. 839; 7 Ves. 152; 1 Jac. & Walk. 122; 1 Pick. 530; 13 Mass. R. 232; 3 Call, 538; 4 Hen. & Munf. 415; 2 Esp. N. P. C. 702; 2 Atk. 106; 2 Dall. 182; 4 Serg. & Rawle, 116; 1 Dall. 349; 3 Binn. 121. As to the distinction between executors and trustees, see Mr. Coxes note to Fellows v. Mitchell, 1 P. Wms. 241; 1 Eden, 857, and the cases there collected.

5. − 3. Tenant for life must pay interest on encumbrances on the estate. 4 Ves. 33; 1 Vern. 404, n. by Raithby. In Pennsylvania the heir at law is not bound to pay interest on a mortgage given by his ancestor.

6. − 4. In Massachusetts a bank is liable, independently of the statute of 1809, c. 87, to pay interest on their bills, if not paid when presented for payment. 8 Mass. 445.

7. − 5. Revenue officers must pay interest to the United States from the time of receiving the money. 6 Binney's Rep. 266.

8. − _1 Who are entitled to receive interest. 1. The lender upon an express or implied contract.

9. − 2. An executor was not allowed interest in a case where money due to his testatrix was out at interest, and before money came to his hands, he advanced his own in payment of debts of the testatrix. Vin. Ab. tit. Interest, C. pl. 13.

10. In Massachusetts a trustee of property placed in his hands for security, who was obliged to advance money to protect it, was allowed interest at the compound rate. 16 Mass. 228.

11. − _3. On what claims allowed. First. On express contracts. Secondly. On implied contracts. And, thirdly. On legacies.

12. First. On express contracts. 1. When the debtor expressly undertakes to pay interest, he or his personal representatives having assets are bound to pay it. But if a party has accepted the principal, it has been determined that he cannot recover interest in a separate action. 1 Esp. N. P. C. 110; 3 Johns. 220. See 1 Camp. 50; 1 Dall. 315; Stark. Ev. pt. iv. 787; 1 Hare & Wall. Sel. Dec. 345.

13. Secondly. On implied contracts. 1. On money lent, or laid out for another's use. Bunb. 119; 2 Bl. Rep. 761; S. C. 3 Wils. 205; 2 Burr. 1077; 5 Bro. Parl. Ca 71; 1 Ves. jr. 63; 1 Dall. 349; 1 Binn. 488; 2 Call, 102; 2 Hen. & Munf. 381; 1 Hayw. 4; 3 Caines' Rep. 226, 234, 238, 245; see 3 Johns. Cas. 303; 9 Johns. 71; 3 Caines' Rep. 266; 1 Conn. Rep. 32; 7 Mass. 14; 1 Dall. 849; 6 Binn. R. 163; Stark. Ev. pt. iv. 789, n. (y), and (z); 11 Mass. 504; 1 Hare & Wall. Sel. Dec. 346.

14. − 2. For goods sold and delivered, after the customary or stipulated term of credit has expired. Doug. 376; 2 B. & P. 337; 4 Dall. 289; 2 Dall. 193; 6 Binn. 162; 1 Dall. 265, 349.

15. − 3. On bills and notes. If payable at a future day certain, after due; if payable on demand, after. a demand made. Bunb. 119; 6 Mod. 138; 1 Str. 649; 2 Ld. Raym. 733; 2 Burr. 1081; 5 Ves. jr. 133; 15 Serg. & R. 264. Where the terms of a promissory note are, that it shall be payable by instalments, and on the failure of any instalment, the whole is to become due, interest on the whole becomes payable from the first default. 4 Esp. 147. Where, by the terms of a bond, or a promissory note, interest is to be paid annually, and the principal at a distant day, the interest may be recovered before the principal is due. 1 Binn. 165; 2 Mass. 568; 3 Mass. 221.

16. − 4. On an account stated, or other liquidated sum, whenever the debtor knows precisely what he is to pay, and when he is to pay it. 2 Black. Rep. 761; S. C. Wils. 205; 2 Ves. 365; 8 Bro. Parl. C. 561; 2 Burr. 1085; 5 Esp. N. P. C. 114; 2 Com. Contr. 207; Treat. Eq. lib. 5, c. 1, s. 4; 2 Fonb. 438; 1 Hayw. 173; 2 Cox, 219; 1 V. & B. 345; 1 Supp. to Ves. jr. 194; Stark. Ev. pt. iv. 789, n. (a). But interest is not due for unliquidated damages, or on a running account where the items are all on one side, unless otherwise agreed upon. 1 Dall. 265; 4 Cowen, 496; 6 Cowen, 193; 5 Verm. 177; 2 Wend. 501; 1 Spears, 209; Rice, 21; 2 Blackf. 313; 1 Bibb, 443.

17. − 5. On the arrears of an annuity secured by a specially. 14 Vin. Ab. 458, pl. 8; 3 Atk. 579; 9 Watts, R. 530.

18. − 6. On a deposit by a purchaser, which he is entitled to recover back, paid either to a principal, or an auctioneer. Sugd. Vend. 327.; 3 Campb. 258; 5 Taunt. 625. Sed vide 4 Taunt. 334, 341.

19. − 7. On purchase money, which has lain dead, where the vendor cannot make a title. Sugd. Vend. 327.

20. − 8. On purchase money remaining in purchaser's hands to pay off encumbrances. 1 Sch. & Lef 134. See 1 Wash. 125; 5 Munf. 342; 6 Binn. 435.

21. − 9. On judgment debts. 14 Vin. Abr. 458, pl. 15; 4 Dall. 251; 2 Ves. 162; 5 Binn. R. 61; Id. 220; 1 Harr. & John. 754; 3 Wend. 496; 4 Metc. 317; 1 Hare & Wall. Sel. Dec. 350. In Massachusetts the principal of a judgment is recovered by execution; for the interest the plaintiff must bring an action. 14 Mass. 239.

22. − 10. On judgments affirmed in a higher court. 2 Burr. 1097; 2 Str. 931; 4 Burr. 2128; Dougl. 752, n. 3; 2 H. Bl. 267; Id. 284; 2 Camp. 428, n.; 3 Taunt. 503; 4 Taunt. 30.

23. − 11. On money obtained by fraud, or where it has been wrongfully detained. 9 Mass. 504; 1 Camp. 129; 3 Cowen, 426.

24. − 12. On money paid by mistake, or recovered on a void execution. 1 Pick. 212; 9 Berg. & Rawle, 409

25. − 13. Rent in arrear due by covenant bears interest, unless under special circumstances, which may be recovered in action; 1 Yeates, 72; 6 Binn. 159; 4 Yeates, 264; but no distress can be made for such interest. 2 Binn. 246. Interest cannot, however, be recovered for arrears of rent payable. in wheat. 1 Johns. 276. See 2 Call, 249; Id. 253; 3 Hen. & Munf. 463; 4 Hen. & Munf. 470; 5 Munf. 21.

26. − 14. Where, from the course of dealing between the parties, a promise to pay interest is implied. 1 Campb. 50; Id. 52 3 Bro. C. C. 436; Kirby, 207.

27. Thirdly, Of interest on legacies. 1. On specific legacies. Interest on specific legacies is to be calculated from the date of the death of testator. 2 Ves. sen. 563; 6 Ves. 345 5 Binn. 475; 3 Munf. 10.

28. − 2. A general legacy, when the time of payment is not named by the testator, is not payable till the end of one year after testator's death, at which time the interest commences to run. 1 Ves. jr. 366; 1 Sch. & Lef. 10; 5 Binn. 475; 13 Ves. 333; 1 Ves. 308 3 Ves. & Bea. 183. But where only the interest is given, no payment will be due till the end of the second year, when the interest will begin to run. 7 Ves. 89.

29. − 3. Where a general legacy is given, and the time of payment is named by the testator, interest is not allowed before the arrival of the appointed period of payment, and that notwithstanding the legacies are vested. Prec. in Chan. 837. But when that period arrives, the legatee will be entitled, although the legacy be charged upon a dry reversion. 2 Atk. 108. See also Daniel's Rep. in Exch. 84; 3 Atk. 101; 3 Ves. 10; 4 Ves. 1; 4 Bro. C. C. 149, n.; S. C. 1 Cox, l33. Where a legacy is given payable at a future day with interest, and the legatee dies before it becomes payable, the arrears of the interest up to the time of his death must be paid to his personal representatives. McClel. Exch. Rep. 141. And a bequest of a sum to be paid annually for life bears interest from the death of testator. 5 Binn. 475.

30. − 4. Where the legatee is a child of the testator, or one towards whom he has placed himself in loco parentis, the legacy bears interest from the testator's death, whether it be particular or residuary; vested, but payable It a future time, or contingent, if the child have no maintenance. In that case the court will do what, in common presumption, the father would have done, provide necessaries for the child. 2 P. Wms. 31; 3 Ves. 287; Id. 13; Bac.

Abr. Legacies, K 3; Fonb. Eq. 431, n. j.; 1 Eq. Cas. Ab. 301, pl. 3; 3 Atk. 432; 1 Dick. Rep. 310; 2 Bro. C. C. 59; 2 Rand. Rep. 409. In case of a child in ventre sa mire, at the time of the father's decease, interest is allowed only from its birth. 2 Cox, 425. Where maintenance or interest is given by the will, and the rate specified, the legatee will not, in general, be entitled to claim more than the maintenance or rate specifled. 3 Atk. 697, 716 3 Ves. 286, n. and see further, as to interest in cases of legacies to children, 15 Ves. 363; 1 Bro. C. C,. 267: 4 Madd. R. 275; 1 Swanst. 553; 1 P. Wms. 783; 1 Vern. 251; 3 Vesey & Beames, 183.

81. − 5. Interest is not allowed by way of maintenance to any other person than the legitimate children of the testator; 3 Ves. 10; 4 Ves. 1; unless the testator has put himself in loco parentis. 1. Sch. & Lef. 5, 6. A wife; 15 Ves. 301; a niece; 3 Ves. 10; a grandchild; 15 Ves. 301; 6 Ves. 546; 12 Ves. 3; 1 Cox, 133; are therefore not entitled to interest by way of maintenance. Nor is a legitimate child entitled to such interest if he have a maintenance; although it may be less than the amount of the interest of the legacy. 1 Scho. & Lef. 5: 3 Ves. 17. Sed vide 4 John. Ch. Rep. 103; 2 Rop. Leg. 202.

32. − 6. Where an intention though not expressed is fairly inferable from the will, interest will be allowed. 1 Swanst. 561, note; Coop. 143.

33. − 7. Interest is not allowed for maintenance, although given by immediate bequest for maintenance, if the parent of the legatee, who is under moral obligation to provide for him, be of sufficient ability, so that the interest will accumulate for the child's benefit, until the principal becomes payable. 3 Atk. 399; 3 Bro. C. C. 416; 1 Bro. C. C. 386; 3 Bro. C. C. 60. But to this rule there are some exceptions. 3 Ves. 730; 4 Bro. C. C. 223; 4 Madd. 275, 289; 4 Ves. 498.

34. − 8. Where a fund, particular or residuary, is given upon a contingency, the intermediate interest undisposed of, that is to say, the intermediate interest between the testator's death, if there be no previous legatee for life, or, if there be, between the death of the previous taker and the happening of the contingency, will sink into the residue for the benefit of the next of kin or executor of the testator, if not bequeathed by him; but if not disposed of, for the benefit of his residuary legatee. 1 Bro. C. C. 57; 4 Bro. C. C. 114; Meriv. 384; 2 Atk. 329; Forr. 145; 2 Rop. Leg. 224.

85. − 9. Where a legacy is given by immediate bequest whether such legacy be particular or residuary, and there is a condition to divest it upon the death of the legatee under twenty−one, or upon the happening of some other event, with a limitation over, and the legatee dies before twenty−one, or before such other event happens, which nevertheless does take place, yet as the legacy was payable at the end, of a year after the testator's death, the legatee's representatives, and not the legatee over, will be entitled to the interest which accrued during the legatee's life, until the happening of the event which was to divest the legacy. 1 P. Wms. 500; 2 P. Wms. 504; Ambl. 448; 5 Ves. 335; Id. 522.

36. − 10. Where a residue is given, so as to be vested but not payable at the end of the year from the testator's death, but upon the legatee's attaining twenty−one, or upon any other contingency, and with a bequest over divesting the legacy, upon the legatee's dying under age, or upon the happening of the contingency, then the legatee's representatives in the former case, and the legatee himself in the latter, shall be entitled to the interest that became due, during the legatee's life, or until the happening of the contingency; 2 P. Wms. 419; 1 Bro. C. C. 81; Id. 335; 3 Meriv. 335.

37. − 11. Where a residue of personal estate is given, generally, to one for life with remainder over, and no mention is made by the testator respecting the interest, nor any intention to the contrary to be collected from the will, the rule appears to be now settled that the person taking for life is entitled to interest from the death of the testator, on such part of the residue, bearing interest, as is not necessary for, the payment of debts. And it is immaterial whether the residue is only given generally, or directely to be laid out, with all convenient speed, in funds or securities, or to be laid out in lands. See 6 Ves. 520; 9 Ves. 549, 553; 2 Rop. Leg. 234; 9 Ves. 89.

38. − 12. But where a residue is directed to be laid out in land, to be settled on one for life, with remainder over, and the testator directs the interest to accumulate in the meantime, until the money is laid out in lands, or otherwise invested on security, the accumulation shall cease at the end of one year from the testator's death, and from that period. the tenant for life shall be to the interest. 6 Ves. 520; 7 Ves. 95; 6 Ves. 528; Id. 529; 2 Sim. & Stu. 396.

39. − 13. Where no time of payment is mentioned by the testator, annuities are considered as commencing from the death of the testator; and consequently the first payment will be due at the end of the year from that event if, therefore, it be not made then, interest, in those cases wherein it is allowed at all, must be computed from that

period. 2 Rop. Leg. 249; 5 Binn. 475. See 6 Mass. 37; 1 Hare & Wall. Sel. Dec. 356.

40. − _4. As to the quantum or amount of interest allowed. 1. During what time. 2. Simple interest. 3. Compound interest. 4. In what cases given beyond the penalty of a bond. 5. When foreign interest is allowed.

41. First. During what time. 1. In actions for money had and received, interest is allowed, in Massachusetts, from the time of serving the writ. 1 Mass. 436. On debts payable on demand, interest is payable only from the demand. Addis. 137. See 12 Mass. 4. The words "with interest for the same," bear interest from date. Addis. 323−4; 1 Stark. N. P. C. 452; Id. 507.

42. − 2. The mere circumstance of war existing between two nations, is not a sufficient reason for abating interest on debts due by the subjects of one belligerent to another. 1 Peters' C. C. R. 524. But a prohibition of all intercourse with an enemy, during war, furnishes a sound reason for the abatement of interest until the return of peace. Id. See,, on this subject, 2 Dall. 132; 2 Dall. 102; 4 Dall. 286; 1 Wash. 172; 1 Call 194; 3 Wash. C. C. R. 396; 8 Serg. & Rawle, 103; Post. _7.

43. Secondly. Simple interest. 1. Interest upon interest is not allowed except in special cases 1 Eq. Cas. Ab. 287; Fonbl. Eq. b. 1, c. _4, note a; U. S. Dig. tit. Accounts, IV.; and the uniform current of decisions is against it, as being a hard, oppressive exaction, and tending to usury. 1 Johns. Ch. R. 14; Cam. & Norw. Rep. 361. By the civil law, interest could not be demanded beyond the principal sum, and payments exceeding that amount, were applied to the extinguishment of the principal. Ridley's View of the Civil, &c. Law, 84; Authentics, 9th Coll.

44. Thirdly. Compound interest. 1. Where a partner has overdrawn the part nership funds, and refuses, when called upon to account, to disclose the profits, recourse would be had to compound interest as a substitute for the profits he might reasonably be supposed to have made. 2 Johns. Ch. R. 213.

45. − 2. When executors, administrators, or trustees, convert the trust money to their own use, or employ it in business or trade, they are chargeable with compound interest. 1 Johns. Ch. R. 620.

46. − 3. In an action to recover the annual interest due on a promissory note, interest will be allowed on each year's interest until paid. 2 Mass. 568; 8 Mass. 455. See, as to charging compound interest, the following cases: 1 Johns. Ch. Rep. 550; Cam. & Norw. 361; 1 Binn. 165; 4 Yeates' 220; 1 Hen. & Munf. 4; 1 Vin. Abr. 457, tit. Interest, C; Com. Dig. Chancery, 3 S 3; 3 Hen. & Munf. 89; 1 Hare & Wall. Sel. Dec. 371. An infant's contract to pay interest on interest, after it has accrued, will be binding upon him, when it is for his benefit. 1 Eq. Cas. Ab. 286; 1 Atk. 489; 3 Atk. 613. Newl. Contr. 2.

47. Fourthly. When given beyond the Penalty of a bond. 1. It is a general rule that the penalty of a bond limits the amount of the recovery. 2 T. R. 388. But, in some cases, the interest is recoverable beyond the amount of the penalty. The recovery depends on principles of law, and not on the arbitrary discretion of a jury. 3 Caines' Rep. 49.

48. − 2. The exceptions are, where the bond is to account for moneys to be received 2 T. R. 388; where the plaintiff is kept out of his money by writs of error; 2 Burr. 1094; 2 Evans' Poth. 101−2 or delayed by injunction; 1 Vern. 349; 16 Vin. Abr. 303; if the recovery of the debt be delayed by the obligor; 6 Ves. 92; 1 Vern. 349; Show. P. C. 15; if extraordinary emoluments are derived from holding the money; 2 Bro. P. C. 251; or the bond is taken only as a collateral security; 2 Bro. P. C. 333; or the action be on a judgment recovered on a bond. 1 East, R. 486. See, also, 4 Day's Cas. 30; 3 Caines' R. 49; 1 Taunt. 218; 1 Mass. 308; Com. Dig. Chancery, 3 S 2; Vin. Abr. Interest, E.

49. − 3. But these exceptions do not obtain in the administration of the debtor's assets, where his other creditors might be injured by allowing the bond to be rated beyond the penalty. 5 Ves. 329; See Vin. Abr. Interest, C, pl. 5.

50. Fifthly. When foreign interest is allowed. 1. The rate of interest allowed by law where the contract is made, may, in general, be recovered; hence, where a note was given in China, payable eighteen months after date, without any stipulation respecting interest, the court allowed the Chinese interest of one per cent. per mouth from the expiration of the eighteen months. 1 Wash. C. C. R. 253.

51. − 2. If a citizen of another state advance money there, for the benefit of a citizen of the state of Massachusetts, which the latter is liable to reimburse, the former shall recover interest, at the rate established by the laws of the place where he lives. 12 Mass. 4. See, further, 1 Eq. Cas. Ab. 289; 1 P. Wms. 395; 2 Bro. C. C. 3; 14 Vin. Abr. 460, tit. Interest, F.

52. − _5. How computed. 1. In casting interest on notes, bonds, &c., upon which partial payments have been made, every payment is to be first applied to keep down the interest, but the interest is: never allowed to form a part of the principal so as to carry interest. 17 Mass. R. 417; 1 Dall. 378.

53. − 2. When a partial payment exceeds the amount of interest due when it is made, it is correct to compute the interest to the time of the first, payment, add it to the principal, subtract the payment, cast interest on the remainder to the time of the second payment, add it to the remainder, and subtract the second payment, and in like manner from one payment to another, until the time of judgment. 1 Pick. 194; 4 Hen. & Munf. 431; 8 Serg. & Rawle' 458; 2 Wash. C. C. R. 167. See 3 Wash. C. C. R. 350; Id. 396.

54. − 3. Where a partial payment is made before the debt is due, it cannot be apportioned, part to the debt and part to the interest. As, if there be a bond for one hundred dollars, payable in one year, and, at the expiration of six months fifty dollars be paid in. This payment shall not be apportioned part to the principal and part to the interest, but at the end of the year, interest shall be charged on the whole sum, and the obligor shall receive credit for the interest of fifty dollars for six mouths. 1 Dall. 124.

55.− _6. When interest will be barred. 1. When the money due is tendered to the person entitled to it, and he refuses to receive it, the interest ceases. 3 Campb. 296. Vide 8 East, 168; 3 Binn. 295.

56. − 2. Where the plaintiff was absent in foreign parts, beyond seas, evidence of that fact may be given in evidence to the jury on the plea of payment, in order to extinguish the interest during such absence. 1 Call, 133. But see 9 Serg. & Rawle, 263.

57. − 3. Whenever the law prohibits the payment of the principal, interest, during the prohibition, is not demandable. 2 Dall. 102; 1 Peters' C. C. R. 524. See, also, 2 Dall. 132; 4 Dall. 286.

58. − 4. If the plaintiff has accepted the principal, he cannot recover the interest in a separate action. 1 Esp. N. P. C. 110; 3 Johns. 229. See 14 Wend. 116.

59.− _7. Rate of interest allowed by law in the different states. Alabama. Eight per centum per annum is allowed. Notes not exceeding one dollar bear interest at the rate of one hundred per centum per annum. Some of the bank charters prohibit certain banks from charging more than six per cent. upon bills of exchange, and notes negotiable at the bank, not having more than six months to run; and, over six and under nine, not more than seven per cent. and over nine months, to charge not more than eight per cent. Aikin's Dig. 236.

60. Arkansas. Six per centum per annum is the legal rate of interest; but the parties may agree in writing for the payment of interest not exceeding ten per centum per annum, on money due and to become due on any contract, whether under seal or not. Rev. St. c. 80, s. 1, 2. Contracts where a greater amount is reserved are declared to be void. Id. s. 7. But this provision will not affect an innocent endorsee for a valuable consideration. Id. s. 8.

61. Connecticut. Six per centum is the amount allowed by law.

62. Delaware. The legal amount of interest allowed in this state is at the rate of six per centum per annum. Laws of Del. 314.

63. Georgia. Eight per centum per annum interest is allowed on all liquidated demands. 1 Laws of Geo. 270; 4 Id. 488; Prince's Dig. 294, 295.

64. Illinois. Six per centum per annum is the legal interest allowed when there is no contract, but by agreenment the parties may fix a greater rate. 3 Griff. L. Reg. 423.

65. Indiana. Six per centum per annum is the rate fixed by law, except in Union county. On the following funds loaned out by the state, namely, Sinking, Surplus, Revenue, Saline, and College funds, seven per cent.; on the Common School Fund, eight per cent. Act of January 31, 1842.

66. Kentucky. Six per centum per annum is allowed by law. There is no provision in favor of any kind of loan. See Sessions Acts, 1818, p. 707.

67. Louisiana. The Civil Code provides, art. 2895, as follows: Interest is either legal or conventional. Legal interest is fixed at the following, rates, to wit: at five per cent. on all sums which are the object of a judicial demand, whence this is called judicial interest; and Rums discounted by banks, at the rate established by their charters. The amount of conventional interest cannot exceed ten per cent. The same must be fixed in writing, and the testimonial proof of it is not admitted. See, also, art. 1930 to 1939.

68. Maine. Six per centum per annum is the legal interest, and any contract for more is voidable as to the excess, except in case of letting cattle, and other usages of a like nature, in practice among farmers, or maritime contracts among merchants, as bottomry, insurance, or course of exchange, as has been heretofore practiced. Rev. St. 4, c. 69, __1, 4.

69. Maryland. Six per centum per annum, is the. amount limited by law, in all cases.

70. Massachusetts. The interest of money shall continue to be at the rate of dollars, and no more, upon one hundred dollars for a year; and at the same rate for a greater or less sum, and for a longer or shorter time. Rev.

Stat. c. 35, s. 1.

71. Michigan. Seven per centum is the legal rate of interest; but on stipulation in writing, interest is allowed to any amount not exceeding ten per cent. on loans of money, but only on such loans. Rev. St. 160, 161.

72. Mississippi. The legal interest is six per centum; but on all bonds, notes, or contracts in writing, signed by the debtor for the bona fide loan of money, expressing therein the rate of interest fairly agreed on between the parties for the use of money so loaned, eight per cent. interest is allowed. Laws of 1842.

73. Missouri. When no contract is made as to interest, six per centum per annum is allowed. But the parties may agree to pay any higher rate, not exceeding ten per cent. Rev. Code, _1, p. 383.

74. New Hampshire. No person shall take interest for the loan of money, wares, or merchandise, or any other personal estate whatsoever, above the value of six pounds for the use or forbearance of one hundred pounds for a year, and after that rate for a greater or lesser sum, or for a longer or shorter time. Act of February 12, 1791, s. 1. Provided, that nothing in this act shall extend to the letting of cattle, or other usages of a like nature, in practice among farmers, or to maritime contracts among merchants as bottomry, insurance, or course of exchange, as hath been heretofore used. Id. s. 2.

75. New Jersey. Six per centum per annum is the interest allowed by law for the loan of money, without any exception. Statute of December 5, 1823, Harr. Comp. 45.

76. New York. The rate is fixed at seven per centum per annum. Rev. Stat. part 2, c. 4, t. 3, s. 1. Moneyed institutions, subject to the safety−fund act, are entitled to receive the legal interest established, or which may thereafter be established by the laws of this state, on all loans made by them, or notes, or bills, by them severally discounted or received in the ordinary course of business; but on all notes or bills by them discounted or received in the ordinary course of business, which shall be matured in sixty−three days from the time of such discount, the said moneyed corporations shall not take or receive more than at the rate of six per centum per annum in advance. 2 Rev. Stat. p. 612.

77. North Carolina. Six per centum per annum is the interest allowed by law. The banks are allowed to take the interest off at the time of making a discount.

78. Ohio. The legal rate of interest on all contracts, judgments or decrees in chancery, is six per centum. per annum, and no more. 29 Ohio Stat. 451; Swan's Coll. Laws, 465. A contract to pay a higher rate is good for principal and interest, and void for the excess. Banks are bound to pay twelve per cent. interest on all their notes during a suspension of specie payment. 37 Acts 30, Act of February 25, 183,9, Swan's Coll. 129.

79. Pennsylvania. Interest is allowed at the rate of six per centum per annum for the loan or use of money or other commodities. Act of March 2, 1723. And lawful interest is allowed on judgments. Act of 1700, 1 Smith's L. of Penn. 12. See 6 Watts, 53; 12 S. & R. 47; 13 S. & R. 221; 4 Whart. 221; 6 Binn. 435; 1 Dall. 378; 1 Dall. 407; 2 Dall. 92; 1 S. & R. 176; 1 Binn. 488; 2 Pet. 538; 8 Wheat. 355.

80. Rhode Island. Six per centum is allowed for interest on loans of money. 3 Griff. Law Reg. 116.

81. South Carolina. Seven per centum per annum, or at that rate, is allowed for interest. 4 Cooper's Stat. of S. C. 364. When more is reserved, the amount lent and interest may be recovered. 6 Id. 409.

82. Tennessee. The interest allowed by law is six per centum per annum. When more is charged it is not recoverable, but the principal and legal interest may be recovered. Act of 1835, c. 50, Car. & Nich. Comp. 406, 407.

83. Vermont. Six per centum per annum is the legal interest. If more be charged and paid, it may be recovered back in an action of assumpsit. But these provisions do not extend "to the letting of cattle and other, usages of a like nature among farmers, or maritime contracts, bottomry or course of exchange, as has been customary." Rev. St. c. 72, ss. 3, 4, 5.

84. Virginia. Interest is allowed at the rate of six per centum per annum. Act of Nov. 22 1796, 1 Rev. Code. ch. 209. Vide 1 Hare & Wall. Sel. Dec. 344, 373.

INTEREST, MARITIME. By maritime interest is understood the profit of money lent on bottomry or respondentia, which is allowed to be greater than simple interest because the capital of the lender is put in jeopardy. There is no limit by law as to the amount which may be charged for maritime interest. It is fixed generally by the agreement of the parties.

2. The French writers employ a variety of terms in order to distinguish if according to the nature of the case. They call it interest, when it is stipulated to be paid by the month, or at other stated periods. It is a premium, when a gross sum is to be paid at the end of the voyage, and here the risk is the principal object they have in view.

When the sum is a per centage on the money lent, they call it exchange, considering it in the light of money lent at one place to be returned in another, with a difference in amount between the sum borrowed and that which is paid, arising from the difference of time and place. When they intend to combine these various shades into one general denomination, they make use of the term maritime profit, to convey their meaning. Hall on Mar. Loans, 56, n.

INTERIM. In the mean time; in the meanwhile. For example, one appointed between the time that a person is made bankrupt, to act in the place of the assignee until the assignee shall be appointed, is an assignee ad interim. 2 Bell's Com. 355.

INTERLINEATION, contracts, evidence. Writing between two lines.

2. Interlineations are made either before or after the execution of an instrument. Those made before should be noted previously to its execution; those made after are made either by the party in whose favor they are, or by strangers.

3. When made by the party himself, whether the interlineation be material or immaterial, they render the deed void; 1 Gall. Rep. 71; unless made with the consent of the opposite party. Vide 11 Co. 27 a: 9 Mass. Rep. 307; 15 Johns. R. 293; 1 Dall. R. 57; 1 Halst. R. 215; but see 1 Pet. C. C. R. 364; 5 Har. & John; 41; 2 L. R. 290; 2 Ch. R. 410; 4 Bing. R. 123; Fitzg. 207, 223; Cov. on Conv. Ev. 22; 2 Barr. 191.

4. When the interlineation is made by a stranger, if it be immaterial, it will not vitiate the instrument, but if it be material, it will in general avoid it. Vide Cruise, Dig. tit. 32, c. 26, s. 8; Com. Dig. Fait, F 1.

5. The ancient rule, which is still said to be in force, is, that an alteration shall be presumed to have been made before the execution of the instrument. Vin. Ab. Evidence, Q, a 2; Id. Faits, U; 1 Swift's Syst. 310; 6 Wheat. R. 481; 1 Halst. 215. But other cases hold the presumption to be that a material interlineation was made after the execution of an instrument, unless the contrary be proved. 1 Dall. 67. This doctrine corresponds nearly with the rules of the canon law on this subject. The canonists have examined it with care. Vide 18 Pick. R. 172; Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 4, n. 115, and article Erasure.

INTERLOCUTORY. This word is applied to signify something which is done between the commencement and the end of a suit or action which decides some point or matter, which however is not a final decision of the matter in issue; as, interlocutory judgments, or decrees or orders. Vide Judgment, interlocutory.

INTERLOPERS. Persons who interrupt the trade of a company of merchants, by pursuing the same business with them in the same place, without lawful authority.

INTERNATIONAL. That which pertains to intercourse between nations. International law is that which regulates the intercourse between, or the relative rights of nations.

INTERNUNCIO. A minister of a second order, charged with the affairs of the court of Rome, where that court has no nuncio under that title.

INTERRELATION, civil law. The act by which, in consequence of an agreement, the party bound declares that he will not be bound beyond a certain time. Wolff, Inst. Nat. _752.

2. In the case of a lease from year to year, or to continue as long as both parties please, a notice given by one of them to the other of a determination to put an end to the contract, would bear the name of interpelation.

INTERPLEADER, practice. Interpleaders may be had at law and in equity.

2. An interpleader at law a proceeding in the action of detinue, by which the defendant states the fact that the thing sued for is in his hands, and that it is claimed by a third person, and that whether such person or the plaintiff is entitled to it, is unknown to the defendant, and thereupon the defendant prays, that a process of garnishment may be issued to compel such third person, so claiming, to become defendant in his stead. 3 Reeves, Hist. of the Eng. Law, ch. 23; Mitford, Eq. Pl. by Jeremy, 141; Story, Eq. Jur. __800, 801, 802. Interpleader is allowed to avoid inconvenience; for two parties claiming adversely to each other, cannot be entitled to the same thing. Bro. Abr. Interpleader, 4. Hence the rule which requires the defendant to allege that different parties demand the same thing. Id. pl. 22.

3. If two persons sue the same person in detinue for the thing, and both action; are depending in the same court at the same time, the defendant may plead that fact, produce the thing (e. g. a deed or charter in court, and aver his readiness to deliver it to either as the court shall adjudge; and thereupon pray that they may interplead. In such a case it has been settled that the plaintiff whose writ bears the earliest teste has the right to begin the interpleading, and the other will be compelled to answer. Bro. Abr. Interpl. 2.

4. In equity, interpleaders are common. Vide Bill of Interpleader, and 8 Vin. Ab. 419; Doct. Pl. 247; 3 Bl. Com. 448; Com. Dig. Chancery, 3 T; 2 Story, Eq. Jur. _800.

INTERPRETATION. The explication of a law, agreement, will, or other instrument, which appears obscure or ambiguous.

2. The object of interpretation is to find out or collect the intention of the maker of the instrument, either from his own words, or from other conjectures, or both. It may then be divided into three sorts, according to the different means it makes use of for obtaining its end.

3. These three sorts of interpretations are either literal, rational, or mixed. When we collect the intention of the writer from his words only, as they lie before us, this is a literal interpretation. When his words do not express his intention perfectly, but either exceed it, or fall short of it, so that we are to collect it from probable or rational conjectures only, this is rational interpretation and when his words, though they do express his intention, when rightly understood, are in themselves. of doubtful meaning, and we are forced to have recourse to like conjectures to find out in what sense he used them this sort of interpretation is mixed; it is partly literal, and partly rational.

4. According to the civilians there are three sorts of interpretations, the authentic, the usual, and the doctrinal.

5. − 1. The authentic interpretation is that which refers to the legislator himself, in order to fix the sense of the law.

6. − 2. When the judge interprets the law so as to accord with prior decisions, the interpretation is called usual.

7. − 3. It is doctrinal when it is made agreeably to rules of science. The Commentaries of learned lawyers in this case furnish the greatest assistance. This last kind of interpretation is itself divided into, three distinct classes. Doctrinal interpretation is extensive, restrictive, or declaratory. 1st. It is extensive whenever the reason of the law has a more enlarged sense than its terms, and it is consequently applied to a case which had not been explained. 2d. On the contrary, it is restrictive when the expressions of the law have a greater latitude than its reasons, so that by a restricted interpretation, an exception is made in a case which the law does not seem to have embraced. 3d. When the reason of the law and the terms in which it is conceived agree, and it is only necessary to explain them to have the sense complete, the interpretation is declaratory. 8. The term interpretation is used by foreign jurists in nearly the same sense that we use the word construction. (q. v.)

9. Pothier, in his excellent treatise on Obligations, lays down the following rules for the interpretation of contracts:

10. − 1. We ought to examine what was the common, intention of the contracting parties rather than the grammatical sense of the terms.

11. − 2. When a clause is capable of two significations, it should be understood in that which will have some operation rather than, that in which it will have none.

12. − 3. Where the terms of a contract are capable of two significations, we ought to understand them in the sense which is most agreeable to the nature of the contract.

13. − 4. Any thing, which may appear ambiguous in the terms of a contract, may be explained by the common use of those terms in the country where it is made.

14. − 5. Usage is of so much authority in the interpretation of agreements, that a contract is understood to contain the customary clauses although they are not expressed; in contractibus tacite veniunt ea quae sunt moris et consuetudinis.

15. − 6. We ought to interpret one clause by the others contained in the same act, whether they precede or follow it.

16. − 7. In case of doubt, a clause ought to be interpreted against the person who stipulates anything, and in discharge of the person who contracts the obligation.

17. − 8. However general the terms may be in which an agreement is conceived, it only comprises those things respecting which it appears that the contracting parties proposed to coutract, and not others which they never thought of.

18. − 9. When the object of the agreement is to include universally everything of a given nature, (une universalite de choses) the general description will comprise all particular articles, although they may not have been in the knowledge, of the parties. We may state, as an example of this rule, an engagement which I make with you to abandon my share in a succession for a certain sum. This agreement includes everything which makes part of the succession, whether known or not; our intention was to contract for the whole. Therefore it is decided, that I cannot object to the agreement, under pretence that considerable property has been found to belong to the succession of which we had not any knowledge.

19. − 10. When a case is expressed in a contract on account of any doubt which there may be whether the

engagement resulting from the contract would. extend to such case, the parties are not thereby understood to restrain the extent which the engagement has of right, in respect to all cases not expressed.

20. − 11. In contracts as well as in testaments, a clause conceived in the plural may be frequently distributed into several particular classes.

21. − 12. That which is at the end of a phrase commonly refers to the whole phrase, and not only to that which immediately precedes it, provided it agrees in gender and number with the whole phrase.

22. For instance, if in the contract for sale of a farm, it is said to be sold with all the corn, small grain, fruits and wine that have been got this year, the terms, that have been got this year, refer to the whole phrase, and not to the wine only, and consequently the old corn is not less excepted than the old wine; it would be otherwise if it had been said, all the wine that has been got this year, for the expression is in the singular, and only refers to the wine and not to the rest of the phrase, with which it does not agree in number. Vide 1 Bouv. Inst. n. 86, et seq.

INTERPRETER. One employed to make a translation. (q v.)

2. An interpreter should be sworn before he translates the testimony of a witness. 4 Mass. 81; 5 Mass. 219; 2 Caines' Rep. 155.

3. A person employed between an attorney and client to act as interpreter, is considered merely as the organ between them, and is not bound to testify as to what be has acquired in those confidential communications. 1 Pet. C. C. R.. 356; 4 Munf. R. 273; 1 Wend. R. 337. Vide Confidential Communications.

INTERREGNUM, polit. law. In an established government, the period which elapses between the death of a sovereign and the election of another is called interregnum. It is also understood for the vacancy created in the executive power, and for any vacancy which occurs when there is no government.

INTERROGATOIRE, French law. An act, or instrument, which contains the interrogatories made by the judge to the person accused, on the facts which are the object of the accasation, and the answers of the accused. Poth. Proc. Crim. s. 4, art. 2, _1. Vide Information.

INTERROGATORIES. Material and pertinent questions, in writing, to necessary points, not confessed, exhibited for the examination of witnesses or persons who are to give testimony in the cause.

2. They are either original and direct on the part, of him who produces the witnesses, or cross and counter, on behalf of the adverse party, to examine witnesses produced on the other side. Either party, plaintiff or defendant, may exhibit original or cross interrogatories.

3. The form which interrogatories assume, is as various as the minds of the persons who propound them. They should be as distinct as possible, and capable of a definite answer; and they should leave no loop−holes for evasion to an unwilling witness. Care must be observed to put no leading questions in original interrogatories, for these always lead to inconvenience; and for scandal or impertinence, interrogatories will, under certain Circumstances, be suppressed. Vide Will. on Interrogatories, passim; Gresl. Ea. Ev pt. 1, c. 3, s. 1; Vin. Ab. h. t.; Hind's Pr. 317; 4 Bouv. Inst. n. 4419, et seq.

INTERRUPTION. The effect of some act or circumstance which stops the course of a prescription or act of limitation's.

2. Interruption of the use of a thing is natural or civil. Natural interruption is an interruption in fact, which takes place whenever by some act we cease truly to possess what we formerly possessed. Vide 4 Mason's Rep. 404; 2 Y. & Jarv. 285. A right is not interrupted by: mere trespassers, if the trespasser's were unknown; but if they were known, and the trespasses frequent, and no legal proceeding instituted in consequence of them, they then become legitimae interruptiones, of which Bracton speaks, and are converted into adverse assertions of right, and if not promptly and effectually litigated, they defeat the claim of rightful prescription; and mere threats of action for the trespasses, without following them up, will have no effect to preserve the right. Knapp, R. 70, 71; 3 Bar. & Ad. 863; 2 Saund. 175, n. e; 1 Camp. 260; 4 Camp. 16; 5 Taunt. 125 11 East, 376.

3. Civil interruption is that which takes place by some judicial act, as the commencement of a suit to recover the thing in dispute, which gives notice to the possessor that the thing which he possesses does not belong to him. When the title has once been gained by prescription, it will not be lost by interruption of it for ten or twenty years. 1 Inst. 113 b. A simple acknowledgment of a debt by the debtor, is a sufficient interruption to prevent the statute from running. Indeed, whenever an agreement, express or implied, takes place between the creditor and the debtor, between the possessor and the owner, which admits the indebtedness or the right to the thing in dispute, it is considered a civil conventional interruption which prevents the statute or the right of prescription from running. Vide 3 Burge on the Confl. of Lalys, 63.

INTERVAL. A space of time between two periods. When a person is unable to perform an act at any two given periods, but in the interval he has performed such act, as when a man is found to be insane in the months of January and March, and he enters into a contract or makes a will in the interval, in February, he will be presumed to have been insane at that time; and the onus will lie to show his sanity, on the person who affirms such act. See Lucid interval.

INTERVENTION, civil law. The act by which a third party becomes a party in a suit pending between other persons.

2. The intervention is made either to be joined to the plaintiff, and to claim the same thing he does, or some other thing connected with it or, to join the defendant, and with him to oppose the claim of the plaintiff, which it−is his interest to defeat. Poth. Proced. Civ. lere part. ch. 2, s. 6, _3. In the English ecclesiastical courts, the same term is used in the same sense.

3. When a third person, not originally a party to the suit or proceeding, but claiming an interest in the subject−matter in dispute, may, in order the better to protect such interest, interpose his claim, which proceeding is termed intervention. 2 Chit. Pr. 492; 3 Chit. Com. Law, 633; 2 Hagg. Cons. R. 137; 3 Phillim. R. 586; 1 Addams, R. 5; Ought. tit. 14; 4 Hagg. Eccl. R. 67 Dual. Ad. Pr. 74. The intervener may come in at any stage of the cause, and even after judgment, if an appeal can be allowed on such judgment. 2 Hagg. Cons. R. 137: 1 Eng. feel. R. 480; 2 E.g. Eccl. R. 13.

INTESTACY. The state or condition of dying without a will.

INTESTABLE. One who cannot law fully make a testament.

2. An infant, an insane person, or one civilly dead, cannot make a will, for want of capacity or understanding; a married woman cannot make such a will without some special authority, because she is under the power of her hushand. They are all intestable.

INTESTATE. One who, having lawful power to make a will, has made none, or one which is defective in form. In that case, he is said to die intestate, and his estate descends to his heir at law. See Testate.

2. This term comes from the Latin intestatus. Formerly, it was used in France indiscriminately with de−confess; that is, without confession. It was regarded as a crime, on account of the omission of the deceased person to give something to the church, and was punished by privation of burial in consecrated ground. This omission, according to Fournel, Hist. des Avocats, vol. 1, p. 116, could be repaired by making an ampliative testament in the name of the deceased. See Vely, tom. 6, page 145; Henrion De Pansey, Authorite Judiciare, 129 and note. Also, 3 Mod. Rep. 59, 60, for the Law of Intestacy in England.

INTIMATION, civil law. The name of any judicial act by which a notice of a legal proceeding. is given to some one; but it is more usually understood to mean the notice or summons which an appellant causes to be given to the opposite party, that the sentence will be reviewed by the superior judge.

2. In the Scotch law, it is an instrument, of writing, made under the hand of a notary, and notified to a party, to inform him of a right which a third person had acquired; for example, when a creditor assigns a claim against his debtor, the assignee or cedent must give an intimation of this to the debtor, who, till then, is justified in making payment to the original creditor. Kames' Eq. B. 1, p. 1, s. 1.

1NTRODUCTION. That part of a writing in which are detailed those facts which elucidate the subject. In chancery pleading, the introduction is that part of a bill which contains the names and description of the persons exhibiting the bill. In this part of the bill are also given the places of abode, title, or office, or business, and the character in which they sue, if it is in autre droit, and such other description as is required to show the jurisdiction of the court. 4 Bouv. Inst. n. 4156.

INTROMISSION Scotch law. The assuming possession of property belonging to another, either on legal grounds, or without any authority; in the latter case, it is called vicious intromission. Bell's S. L. Dict. h. t.

INTRONISATION, French eccl. law. The installation of a hishop in his episcopal see. Clef des Lois Row. h. t. Andre.

INTRUDER. One who, on the death of the ancestor, enters on the land, unlawfully, before the heir can enter.

INTRUSION, estates, torts. When an ancestor dies seised of an estate of inheritance expectant upon an estate for life, and then the tenant dies, and between his death and the entry of the heir, a stranger unlawfully enters upon the estate, this is called an intrusion. It differs from an abatement, for the latter is an entry into lands void by the death of a tenant in fee, and an intrusion, as already stated, is an entry into land void by the death of a tenant for years. F. N. B. 203 3 Bl. Com. 169 Archb. Civ. Pl. 12; Dane's Ab. Index, h. t.

INTRUSION, remedies. The name of a writ, brought by the owner of a fee simple, &c., against an intruder. New Nat. Br. 453.

INUNDATION. The overflow of waters by coming out of their bed.

2. Inundations may arise from three causes; from public necessity, as in defence of a place it may be necessary to dam the current of a stream, which will cause an inundation to the upper lands; they may be occasioned by an invincible force, as by the accidental fall of a rock in the stream; or they may result from the erections of works on the stream. In the first case, the injury caused by the inundation is to be compensated as other injuries done in war; in the second, as there was no fault of any one, the loss is to be borne by the unfortunate owner of the estate; in the last, when the riparian. proprietor is injured by such works as alter the level of the water where it enters or where it leaves the property on which they are erected, the person injured may recover damages for the injury thus caused to his property by the innundation. 9 Co. 59; 4 Day's R. 244; 17 Serg. & Rawle, 383; 3 Mason's R. 172; 7 Pick. R. 198; 7 Cowen, R. 266; 1 B. & Ald. 258; 1 Rawle's R. 218; 5 N. H. Rep. 232; 9 Mass. R. 316; 4 Mason's R. 400; 1 Sim. & Stu. 203; 1 Come's R. 460. Vide Schult. Aq. R. 122; Ang. W. C. 101; 5 Ohio, R. 322, 421; and art. Dam.

TO INURE. To take effect; as, the pardon inures.

INVALID. In a physical sense, it is that which is wanting force; in a figurative sense, it signifies that which has no effect.

INVASION. The entry of a country by a public enemy, making war.

2. The Constitution of the United States, art. 1, s. 8, gives power to congress "to provide for calling the militia to execute the laws of the Union, suppress insurrections, and repel invasions." Vide Insurrection.

INVENTION. A contrivance; a discovery. It is in this sense this word is used in the patent laws of the United States. 17 Pet. 228; S. C. 1 How. U. S. 202. It signifies not something which has been found ready made, but something which, in consequence of art or accident, has been formed; for the invention must relate ot some new or useful art, machine, manufacture, or composition of matter, not before known or used by others. Act of July 4, 1836, 4 Sharsw. continuation of Story's L. U.S. 2506; 1 Mason, R. 302; 4 Wash. C. C. R. 9. Vide Patent. By invention, the civilians understand the finding of some things which had not been lost; they must either have abandoned, or they must have never belonged to any one, as a pearl found on the sea shore. Lec. Elem _ 350.

INVENTIONES. This word is used in some ancient English charters to signify treasure−trove.

INVENTOR. One who invents or finds out something.

2. The patent laws of the United States authorize a patent to be issued to the original inventor; if the invention is suggested by another, he is not the inventor within the meaning of those laws; but in that case the suggestion must be of the specific process or machine; for a general theoretical suggestion, as that steam might be applied to the navigation of the air or water, without pointing out by what specific process or machine that could be accomplished, would not be such a suggestion as to deprive the person to whom it had been made from being considered as the inventor. Dav. Pat. Cas. 429; 1 C. & P. 558; 1 Russ. & M. 187; 4 Taunt. 770; B ut see 1 M. G. & S. 551; 3 Man. Gr. & Sc. 97.

3. The applicant for a patent must be both the first and original inventor. 4 Law Report. 342.

INVENTORY. A list, schedule, or enumeration in writing, containing, article by article, the goods and chattels, rights and credits, and, in some cases, the lands and tenements, of a person or persons. In its most common acceptation, an inventory is a conservatory act, which is made to ascertain the situation of an intestate's estate, the estate of an insolvent, and the like, for the purpose of securing it to those entitled to it.

2. When the inventory is made of goods and estates assigned or conveyed in trust, it must include all the property conveyed.

3. In case of intestate estates, it is required to contain only the personal property, or that to which the administrator is entitled. The claims due to the estate ought to be separated; those which are desperate or had ought to be so returned. The articles ought to be set down separately, as already mentioned, and separately valued.

4. The inventory is to be made in the presence of at least two of the creditors of the deceased, or legatees or next of kin, and, in their default and absence, of two honest persons. The appraisers must sign it, and make oath or affirmation that the appraisement is just to the best of their knowledge. Vide, generally, 14 Vin. Ab. 465; Bac. Ab. Executors, &c., E 11; 4 Com. Dig. 14; Ayliffe's Pand. 414; Ayliffe's Parerg. 305; Com. Dig. Administration, B 7; 3 Burr. 1922; 2 Addams' Rep. 319; S. C. 2 Eccles. R. 322; Lovel. on Wills; 38; 2 Bl. Com. 514; 8 Serg. & Rawle, 128; Godolph. 150, and the article Benefit of Inventory.

TO INVEST, contracts. To lay out money in such a manner that it may bring a revenue; as, to invest money in houses or stocks; to give possession.

2. This word, which occurs frequently in the canon law, comes from the Latin word investire, which signifies to clothe or adorn and is used, in that system of jurisprudence, synonymously with enfeoff. Both words signify to put one into the possession of, or to invest with a fief, upon his taking the oath of fealty or fidelity to the prince or superior lord.

INVESTITURE, estates. The act of giving possession of lands by actual seisin When livery of seisin was made to a person by the common law he was invested with the whole fee; this, the foreign feudists and sometimes ’our own law writers call investiture, but generally speaking, it is termed by the common law writers, the seisin of the fee. 2 Bl. Com. 209, 313; Feame on Rem. 223, n. (z).

2. By the canon law investiture was made per baculum et annulum, by the ring and crosier, which were regarded as symbols of the episcopal jurisdiction. Ecclesiastical and secular fiefs were governed by the same rule in this respect that previously to investiture, neither a hishop, abbey or lay lord could take possession of a fief. conferred upon them previously to investiture by the prince.

3. Pope Gregory VI. first disputed the right of sovereigns to give investiture of ecclesiastical fiefs, A. D. 1045, but Pope Gregory VII. carried. on the dispute with much more vigor, A. D. 1073. He excommunicated the emperor, Henry IV. The Popes Victor III., Urban II. and Paul II., continued the contest. This dispute, it is said, cost Christendom sixty−three battles, and the lives of many millions of men. De Pradt.

INVIOLABILITY. That which is not to be violated. The persons of ambassadors are inviolable. See Ambassador.

INVITO DOMINO, crim. law. Without the consent of the owner.

2. In order to constitute larceny, the property stolen must be taken invito domino; this is the very essence of the crime. Cases of considerable difficulty arise when the owner has, for the purpose of detecting thieves, by himself or his agents, delivered the property taken, as to whether they are larcenies or not; the distinction seems to be this, that when the owner procures the property to be taken it is not larceny; and when he merely leaves it in the power of the defendant to execute his original purpose of taking it, in the latter case it will be considered as taken invito domino. 2 Bailey’s Rep. 569; Fost. 123; 2 Russ. on Cr. 66, 105; 2 Leach, 913; 2 East, P. C. 666; Bac. Ab. Felony, C.; Alis. Prin. 273; 2 Bos. & Pull. 508; 1 Carr. & Marsh. 217; article, Taking.

INVOICE, commerce. An account of goods or merchandise sent by merchants to their correspondents at home or abroad, in which the marks of each package, with other particulars, are set forth. Marsh. Ins. 408; Dane’s Ab. Index, h. t. An invoice ought to contain a detailed statement, which should indicate the nature, quantity, quality, and price of the things sold, deposited, &c. 1 Pardess. Dr. Com. n. 248. Vide Bill of Lading; and 2 Wash. C. C. R. 113; Id. 155.

INVOICE BOOK, commerce, accounts. One in which invoices are copied.

INVOLUNTARY. An involuntary act is that which is performed with constraint, (q. v.) or with repugnance, or without the will to do it. An action is involuntary then, which is performed under duress. Wolff, _5. Vide Duress.

IOWA. The name of one of the new states of the United States of America.

2. This state was admitted into the Union by the act of congress, approved the 3d day of March, 1845.

3. The powers of the government are divided into three separate departments, the legislative, the executive, and judicial and no person charged with the exercise of power properly belonging to one of these departments, shall exercise any function appertaining to either of the others, except in cases provided for in the constitution.

4. − I. The legislative authority of this state is vested in a senate and house of representatives , which are designated the general assembly of the state of Iowa.

5. − _1. Of the senate. This will be considered with reference, 1. To the qualifications of the electors. 2. The qualifications of the members. 3. The length of time for which they are elected. 4. The time of their election. 5. The number of senators.

6. − 1. Every white. male citizen of the United States, of the age of twenty−one years, who shall have been a resident of the state six months next preceding the election, and the county, in which he claims his vote twenty days, shall be entitled to vote at all elections which are how or hereafter may be authorized by law. But with this exception, that no person in the military, naval, or marine service of the United States, shall be considered a resident of this state, by being stationed in any garrison, barrack, military or naval place or station within this state. And no idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privilege

of an elector. Art. 3.

7. − 2. Senators must be twenty−five years of age, be free white male citizens of the United States, and have been inhabitants of the state or territory one, year next preceding their election; and, at the time of their elections have an actual residence of thirty days in the county or district they may be chosen to represent. Art. 4, s. 5.

8. − 3. The senators are elected for four years. They are so classed that one−half are renewed every two years. Art. 4, s. 5.

9.−4. They are chosen every second year, on the first Monday in August. Art. 4, B. 3.

10. − 5. The number of senators; is not less than one−third, nor more than one−half the representative body. Art. 4, s. 6.

11.− _2. Of the house of representatives. This will be considered in the same order which has been observed with regard to the senate.

12. − 1. The electors qualified to vote for senators are electors of members of the house of representatives.

13. − 2. No person shall be a member of the house of representatives who shall not have attained the age of twenty−one years; be a free male white citizen of the United States, and have been an inhabitant of the state or territory one year next preceding his election; and at the time of his election have an actual residence of thirty days in the county or district he may be chosen to represent. Art. 4, s. 4.

14. − 3. Members of the house of representatives are chosen, for two years. Art. 4, s. 3.

15.−4. They are elected at the same time that senators are elected.

16.−5. The number of representatives is not limited.

17. The two houses have respectively the following power's. Each house has power − To choose its own officers, and judge of the qualification of its members. To sit upon its adjournments; keep a journal of its proceedings and publish the same; punish members for disorderly behaviour, and, with the consent of two−thirds, expel a member but not a second time for the same offence; and shall have all other power necessary for a branch of the general assembly of a free and independent state.

18. The house of representatives has the power of impeachment, and the senate is a court for the trial of persons impeached.

19. − II. The supreme executive power is vested in a chief magistrate, who is called the governor of the state of Iowa. Art. 5, s. 1.

20. The governor shall be elected by the qualified electors, at the time and place of voting for members of the general assembly, and hold his office for four years from the time of his installation, and until his successor shall be duly qualified. Art. 5, s. 2.

21. No person shall be eligible to the office of governor, who is not a citizen of the United States, a resident of the state two years next preceding his election, and attained the age of thirty−five years at the time of holding said election. Art. 5, s. 3.

22. Various powers are conferred on the governor among others, he shall be commander−in−chief of the militia, army, and navy of the state; transact executive business with the officers of the government; see that the laws are faithfully executed; fill vacancies by granting temporary commissions on extraordinary occasions convene the general assembly by proclamation; communicate by message with the general assembly at every session adjourn the two houses when they cannot agree upon the time of an adjournment; may grant reprieves and pardons, and commute punishments after conviction, except in cases of impeachment shall be keeper of the great seal; and sign all commissions. He is also invested with the veto power.

23. When there is a vacancy in the office of governor, or in case of his impeachment, the duties of his office shall devolve on the secretary of state; on his default, on the president of the senate and if the president cannot act, on the speaker of the house of representatives.

24. − III. The judicial power shall be vested in a supreme court, district courts, and such inferior courts as the general assembly may, from time to time, establish. Art. 6, s. 1.

25. − _1. The supreme court shall consist of a chief justice and two associates, two of whom shall be a quorum to hold court. Art. 6, s. 2.

26. The judges of the supreme court shall be elected by joint ballot of both branches of the general assembly, and shall hold their courts at such time and place as the general assembly may direct, and hold their office for six years, and until their successors are elected and qualified, and shall be ineligible to any other office during the term for which they may be elected Art. 6, s. 3.

27. The supreme court shall have appellate jurisdiction only in all eases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as tho general assembly may by law prescribe. It shall have power to issue all writs and process necessary to do justice to parties, and exercise a supervisory control over all inferior judicial tribunals, and the judges of the supreme court shall be conservators of the peace throughout the state. Art. 6, s. 3.

28. − _2. The district court shall consist of a judge who shall be elected by the qualified electors of the district in which he resides, at the township election, and hold his office for the term of five years, and until his successor is duly elected and qualified, and shall be ineligible to any other office during the term for which he may be elected.

29. The district court shall be a court of law and equity, and have jurisdiction in all civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law. The judges of the district courts shall be conservators of the peace in their respective districts. The first general assembly shall divide the state into four districts, which may be increased as the exigencies require. Art. 6, s. 4.

IPSE. He, himself; the very man.

IPSO FACTO. By the fact itself.

2. This phrase is frequently employed to convey the idea that something which has been done contrary to law is void. For example, if a married man, during the life of his wife, of which he had knowledge, should marry another woman, the latter marriage would be void ipsofacto; that is, on that fact being proved, the second marriage would be declared void ab initio.

IPSO JURE. By the act of the law itself, or by mere operation of law.

IRE AD LARGUM. To go at large; to escape, or be set at liberty. Vide Ad largum.

IRONY, rhetoric. A term derived from the Greek, which signifies dissimulation. It is a refined species of ridicule, which, under the mask of honest simplicity or ignorance, exposes the faults and errors of others, by seeming to adopt or defend them.

2. In libels, irony may convey imputations more effectually than direct assertion, and render the publication libelous. Hob. 215; Hawk. B. 1, c. 73, s. 4; 3 Chit. Cr. Law, 869, Bac. Ab. Libel, A 3.

IRREGULAR. That which is done contrary to the common rules of law; as, irregular process, which is that issued contrary to law and the common practice of the court. Vide Regular and. Irregular Process.

IRREGULAR DEPOSIT. This name is given to that kind of deposit, where the thing deposited need not be returned; as, where a man deposits, in the usual way, money in bank for safe keeping, for in this case the title to the identical money becomes vested in the bank, and he receives in its place other money.

IRREGULARITY, practice. The doing or not doing that in the conduct of a suit at law, which, conformably with the practice of the court, ought or ought not to be done.

2. A party entitled to complain of irregularity, should except to it previously to taking any step by him in the cause; Lofft. 323, 333; because the taking of any such step is a waiver of any irregularity. 1 Bos. k Pbil. 342; 2 Smith's R. 391; 1 Taunt. R. 58; 2 Taunt. R. 243; 3 East, R. 547; 2 New R. 509; 2 Wils. R. 380.

3. The court will, on motion, set aside proceedings for irregularity. On setting aside a judgment and execution for irregularity, they have power to impose terms on the defendant, and will restrain him from bringing an action of trespass, unless a strong case of damage appears. 1 Chit. R. 133, n.; and see Baldw. R. 246. Vide 3 Chit. Pr. 509; and Regular and Irregular Process.

4. In the canon law, this term is used to signify any impediment which prevents a man from taking holy orders.

IRRELEVANT EVIDENCE. That which does not support the issue, and which) of course, must be excluded. See Relevant.

IRREPLEVISABLE, practice. This term is applied to those things which cannot legally be replevied. For example, in Pennsylvania no goods seized in execution or for taxes, can be replevied.

IRRESISTIBLE FORCE. This term is applied to such an interposition of human agency, as is, from its nature and power, absolutely uncontrollable; as the inroads of a hostile army. Story on Bailm. _25; Lois des Batim. pt. 2. c. 2, _1. It differs from inevitable accident; (q. v.) the latter being the effect of physical causes, as, lightning, storms, and the like.

IREVOCABLE. That which cannot be revoked.

2. A will may at all times be revoked by the same person who made it, he having a disposing mind; but the moment the testator is rendered incapable to make a will he can no longer revoke a former will, because he wants a disposing mind. Letters of attorney are generally revocable; but when made for a valuable consideration they

become irrevocable. 7 Ves. jr. 28; 1 Caines' Cas. in Er. 16; Bac. Ab. Authority, E. Vide duthority; License; Revocation.

IRRIGATION. The act of wetting or moist ening the ground by artificial means.

2. The owner of land over which there is a current stream, is, as such, the proprietor of the current. 4 Mason's R. 400. It seems the riparian proprietor may avail himself of the river for irrigation, provided the river be not thereby materially lessened, and the water absorbed be imperceptible or trifling. Ang. W. C. 34; and vide 1 Root's R. 535; 8 Greenl. R. 266; 2 Conn. R. 584; 2 Swift's Syst. 87; 7 Mass. R. 136; 13 Mass. R. 420; 1 Swift's Dig. 111; 5 Pick. R. 175; 9 Pick. 59; 6 Bing. R. 379; 5 Esp. R. 56; 2 Conn. R. 584; Ham. N. P. 199; 2 Chit. Bl. Com. 403, n. 7; 22 Vin. Ab. 525; 1 Vin. Ab. 657; Bac. Ab. Action on the case, F. The French law coincides with our own. 1 Lois des Bƒtimens, sect. 1, art. 3, page 21.

IRRITANCY. In Scotland, it is the happening of a condition or event by which a charter, contract or other deed, to which a clause irritant is annexed, becomes void. Ersk. Inst. B. 2, t. 5, n. 25. Irritancy is a kind of forfeiture. It is legal or conventional. Burt. Man. P. R. 29 8.

ISLAND. A piece of land surrounded by water.

2. Islands are in the sea or in rivers. Those in the sea are either in the open sea, or within the boundary of some country.

3. When new islands arise in the open sea, they belong to the first occupant: but when they are newly formed so near the shore as to be within the boundary of some state, they belong to that state.

4. Islands which arise in rivets when in the middle of the stream, belong in equal parts to the riparian proprietors when they arise. mostly on one side, they will belong to the riparian owners up to the middle of the stream. Bract. lib. 2, c. 2; Fleta, lib. 3, c. 2, s. 6; 2 Bl. 261; 1 Swift's Dig. 111; Schult. Aq. R. 117; Woolr. on Waters: 38; 4 Pick. R. 268; Dougl. R. 441; 10 Wend. 260; 14 S. & R. 1. For the law of Louisiana, see Civil Code, art. 505, 507.

5. The doctrine of the common law on this subject, founded on reason, seems to have been borrowed from the civil law. Vide Inst. 2, 1, 22; Dig. 41, 1, 7; Code, 7; 41, 1.

ISSINT. This is a Norman French word which signifies thus, so. It has given the name to a part of a plea, because when pleas were in that language this word was used. In actions founded on deeds, the defendant may, instead of pleading non est factum in the common form, allege any special matter which admits the execution of the writing in question, but which, nevertheless, shows that it is not in law his deed; and may conclude with and so it is not his deed; as that the writing was delivered to A B as an escrow, to be de−livered over on certain conditions, which have not been complied with, "and so it is not his act;" or that at, the time of making the writing, the defendant was a feme covert,: and so it is not her act." Bac. Ab. Pleas, H 3, I 2; Gould on Pl. c. 6, part 1, _64.

2. An example of this form of plea which is sometimes called the special general issue, occurs in 4 Rawle, Rep. 83, 84.

ISSUABLE, practice. Leading or tending to an issue. An issuable plea is one upon which the plaintiff can take issue and proceed to trial.

ISSUE, kindred. This term is of very extensive import, in its most enlarged signification, and includes all persons who have descended from a common ancestor. 17 Ves. 481; 19. Ves. 547; 3 Ves. 257; 1 Rop. Leg. 88 and see Wilmot's Notes, 314, 321. But when this word is used in a will, in order to give effect to the testator's intention it will be construed in a more restricted sense than its legal import conveys. 7 Ves. 522; 19 Ves. 73; 1 Rop. Leg. 90. Vide Bac. Ab. Curtesy of England, D; 8 Com. Dig. 473; and article Legatee, II. _4.

ISSUE, pleading. An issue, in pleading, is defined to be a single, certain and material point issuing out of the allegations of the parties, and consisting, regularly, of an affirmative and negative. In common parlance, issue also signifies the entry of the pleadings. 1 Chit. Pl. 630.

2. Issues are material when properly formed on some material point, which will decide the question in dispute between the parties; and immaterial, when formed on some immaterial fact, which though found by the verdict will not determine the merits of the cause, and would leave the court at a loss how to give judgment. 2 Saund. 319, n. 6.

3. Issues are also divided into issues in law and issues in fact. 1. An issue in law admits all the facts and rests simply upon a question of, law. It is said to consist of a single point, but by this it must be understood that such issue involves, necessarily, only a single rule or principle of law, or that it brings into question the legal sufficiency of a single fact only. It is meant that such an issue reduces the whole controversy to the single

question, whether the facts confessed by the issue are sufficient in law to maintain the action or defence of the party who alleged them. 2. An issue in fact, is one in which the parties disagree as to their existence, one affirming they exist, and the other denying it. By the common law, every issue in fact, subject to some exceptions, which are noticed below, must consist of a direct affirmative allegation on the one side, and of a direct negative on the other. Co. Litt. 126, a; Bac. Ab. Pleas, &c. G 1; 5 Pet. 149; 2 Black. R. 1312; 8 T. R. 278. But it has been holden that when the defendant pleaded that he was born in France, and the plaintiff replied that he was born in England, it was sufficient to form a good issue. 1 Wils. 6; 2 Str. 1177. In this case, it will be observed, there were two affirmatives, and the ground upon which the issue was holden to be good is that the second affirmative is so contrary to the first, that the first cannot in any degree be true. The exceptions above mentioned to the rule that a direct affirmative and a direct negative are required, are the following: 1st. The general issue upon a writ of right is formed by two affirmatives: the demandant, on one side, avers that he has greater right than the tenant; and, on the other, that the tenant has a greater right than the demandant. This issue is called the mise. (q. v.) Lawes, Pl. 232; 3 Chit. Pl. 652: 3 Bl. Com. 195, 305. 2d. In an action of dower, the court merely demands the third part of acres of land, &c., as the dower of the demandant of the endowment of A B, heretofore the hushand, &c., and the general issue is, that A B was not seised of such estate, &c., and that he could not endow the demandant thereof, &c. 2 Saund. 329, 330. This mode of negation, instead of being direct, is merely argumentative, and argumentativeness is not generally allowed in pleading.

4. Issues in fact are divided into general issues, special issues, and common issues.

5. The general issue denies in direct terms the whole declaration; as in personal actions, where the defendant pleads nil debet, that he owes the plaintiff nothing; or non culpabilis, that he is not guilty of the facts alleged in the declaration; or in real actions, where the defendant pleads nul tort, no wrong done − or nul disseisin, no disseisin committed. These pleas, and the like, are called general issues, because, by importing an absolute and general denial of all the matters alleged in the declaration, they at once put them all in issue.

6. Formerly the general issue was seldom pleaded, except where the defendant meant wholly to deny the charge alleged against him for when he meant to avoid and justify the charge, it was usual for him to set forth the particular ground of his defence as, a special plea, which appears to have been necessary' to apprize the court and the plaintiff of the particular nature and circumstances of the defendant's case, and was originally intended to keep the law and the fact distinct. And even now it is an invariable rule, that every defence which cannot be, specially pleaded, may be given in evidence at the trial upon the general issue, so the defendant is in many cases obliged to plead the particular circumstances of his defence specially, and cannot give them in evidence on that general plea. But the science of special pleading having been frequently perverted to the purposes of chicane and delay, the courts have in some instances, and the legislature in others, permitted the general issue to be pleaded, and special matter to be given in evidence under it at the trial, which at once includes the facts, the equity, and the law of the case. 3 Bl. Com. 305, 6; 3 Green. Ev. _9.

7. The special issue is when the defendant takes issue upon anly one substantial part of the declaration, and rests the weight of his case upon it; he is then said to take a special issue, in contradistinction to tho general issue, which denies and puts in issue the whole of the declaration. Com. Dig. Pleader, R 1, 2.

8. Common issue is the name given to that which is formed on the single plea of non est factum, when pleaded to an action of covenant broken. This is so called, because to an action of covenant broken there can properly be no general issue, since the plea of non est fadum, which denies the deed only, and not the breach, does not put the whole declaration in issue. 1 Chit. Pl. 482; Lawes on Pl. 113; Gould, Pl. c. 6, part 1, _7 and _10, 2.

9. Issues are formal and informal.

10. A formal issue is one which is formed according to the rules required by law, in a proper and artificial manner.

11. An informal issue is one which arises when a material allegation is traversed in an improper or artificial manner. Ab. Pleas, &c., G 2, N 5; 2 Saund. 319, a, n. 6. The defect is cured by verdict., by the statute of 32 H. VIII. c. 30.

12. Issues are also divided into actual and feigned issues.

13. An actual issue is one formed in an action brought in the regular manner, for the purpose of trying a question of right between the parties.

14. A feigned issue is one directed by a court, generally by a court exercising equitable powers, for the purpose of trying before a jury a matter in dispute between the parties. When in a court of equity any matter of fact is

strongly contested, the court usually directs the matter to be tried by a jury, especially such important facts as the validity of a will, or whether A is the heir at law of B.

15. But as no jury is summoned to attend this court, the fact is usually directed to be tried in a court of law upon a feigned issue. For this purpose an action is brought in which the plaintiff by a fiction dares that he laid a wager for a sum of money with the defendant, for example, that a certain paper is the last will and testament of A; then avers it is his will, and therefore demands the money; the defendant admits the wager but avers that, it is not the will of A, and thereupon that. issue is joined, which is directed out of chancery to be tried; and thus the verdict of the jurors at law determines the fact in the court of equity.

16. These feigned issues are frequently used in the courts of law, by consent of the parties, to determine some disputed rights without the formality of pleading, and by this practice much time and expense are saved in the decision of a cause. 3 Bl. Com. 452. The consent of the court must also be previously obtained; for the trial of a feigned issue without such consent is a contempt, which will authorize the court to order the proceeding to be stayed, and punish the parties engaged. 4 T. R. 402. See Fictitious action. See, generally Bouv. Inst. Index, h. t.

ISSUE ROLL, Eng. law. The name of a record which contains an entry of the term of which the demurrer book, issue or paper book is entitled, and the, warrants of attorney supposed to have been given by the parties at the commencement of the cause, and then proceeds with the transcript of the declaration and subsequent pleadings, continuances, and award of the mode of the decision as contained in the demurrer, issue or paper book. Steph. Pl. 98, 99. After final judgment, the issue roll is no longer called by that name, but assumes that of judgment roll. 2 Arch. Pr. 206.

ISSUES, Eng. law. The goods and profits of the lands of a defendant against whom a writ of distringas or distress infinite has been issued, taken by virtue of such writ, are called issues. 3 Bl. Com. 280; 1 Chit. Cr. Law, 351.

ISTHMUS. A tongue or strip of land between two seas. Glos. on Law, 37, book 2, tit. 3, of the Dig.

ITA EST. These words signify so it is. Among the civilians when a notary dies, leaving his register, an officer who is authorized to make official copies of his notarial acts, writes instead of the deceased notary's name, which is required, when he is living, ita est,

ITA QUOD. The name or condition in a submission which is usually introduced by these words "so as the award be made of and upon the premises," which from the first word is called the ita quod.

2. When the submission is with an ita guod, the arbitrator must make an award of all matters. submitted to him of which he had notice, or the award will be entirely void. 7 East, 81; Cro. Jac. 200; 2 Vern. 109; 1 Ca. Chan. 86; Roll. Ab. Arbitr. L. 9.

ITEM. Also; likewise; in like manner.; again; a second time. These are the various meanings of this Latin adverb. Vide Construction.

2. In law it is to be construed conjunctively, in the sense. of and, or also, in such a manner as to connect sentences. If therefore a testator bequeath a legacy to Peter payable out of a particular fund, or charged upon a particular estate, item a legacy to James, James' legacy as well as Peter's will be a charge upon the same property. 1 Atk. 436; 3 Atk. 256 1 Bro. C. C. 482; 1 Rolle's Ab. 844; 1 Mod. 100; Cro. Car. 368; Vaugh. 262; 2 Rop. on Leg. 849; 1 Salk. 234. Vide Disjunctive.

ITER. A foot way. Vide Way.

ITINERANT. Travelling or taking a journey. In England there were formerly judges called Justices itinerant, who were sent with commissions into certain counties to try causes.

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