P.

PACE. A measure of length containing two feet and a half; the geometrical pace is five feet long. The common pace is the length of a step; the geometrical is the length of two steps, or the whole space passed over by the same foot from one step to another.

PACIFICATION. The act of making peace between two countries which have teen at war; the restoration of public tranquillity.

TO PACK. To deceive by false appearance; to counterfeit; to delude; as packing a jury. (q. v.) Bac. Ab. Juries, M; 12 Conn. R. 262.

PACT, civil law. An agreement made by two or more persons on the same subject in order to form some engagement, or to dissolve or modify, one already made, conventio est duorum in idem placitum consensus de re solvenda, id. est facienda vel praestanda. Dig. 2, 14; Clef des Lois Rom. h. t.; Ayl. Pand. 558; Merl, Rep. Pacte, h. t.

PACTIONS, International law. When contracts between nations are to be performed by a single act, and their execution is at an end at once, they are not called treaties, but agreements, conventions or pactions. 1 Bouv. Inst. n. 100.

PACTUM CONSTITUTAE PECUNIAE, civil law. An agreement by which a person appointed to his creditor, a certain day, or a certain time, at which he pro−mised to pay; or it maybe defined, simply. an agreement by which a person promises a creditor to pay him.

2. When a person by this pact promises his own creditor to pay him, there arises a new obligation which does not destroy the former by which he was already bound, but which is accessory to it; and by this multiplicity of obligations the right of the creditor is strengthened. Poth. Ob. Pt. 2, c. 6, s. 9.

3. There is a striking conformity between the pactum constitutae pecuniae, as above defined, and our indebitatus assumpsit. The pactum constitutae pecuniae was a promise to pay a subsisting debt whether natural or civil; made in such a manner as not to extinguish the preceding debt, and introduced by the praetor to obviate some formal difficulties. The action of indebitalus assumpsit was brought upon a promise for the payment of a debt, it was not subject to the wager of law and other technical difficulties of the regular action of debt; but by such promise, the right to the action of debt was not extinguished nor varied. 4 Rep. 91 to 95; see 1 H. Bl. 550 to 655; Doug. 6, 7; 3 Wood. 168, 169, n. c; 1 Vin. Abr. 270; Bro. Abr. Action sur le case, pl. 7, 69, 72; Fitzh. N. B. 94, A, n. a, 145 G; 1 New Rep. 295; Bl. Rep. 850; 1 Chit. Pl. 89; Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 4, u. 388, 396.

PACTUM DE NON PETANDO, civil law. An agreement made, between a creditor and his debtor that the former will not demand, from the latter the debt due. By this agreement the debtor is freed from his obligation. This is not unlike the covenant not to sue, (q. v.) of the common law. Wolff, Dr. de la Nat. _755.

PACTUM DE QUOTA LITIS. An agreement by which a creditor of a sum difficult to recover, promises a portion, for example, one−third, to the person who will undertake to recover it. In general, attorneys will abstain from, making such a contract, yet it is not unlawful.

PAGODA, comm. law. A denomination of money in Bengal. In the computation of ad valorem duties, it is valued at one dollar and ninety−four cent's. Act of March 2, 1799, s. 61, 1 Story's L. U. S. 626. Vide Foreign Coins.

PAIS, or PAYS. A French word signifying country. In law, matter in pais is matter of fact in opposition to matter of record: a trial per pais, is a trial by the country, that is, by a jury.

PALFRIDUS, A palfrey; a horse to travel on. 1 Tho. Co. Litt. 471; F. N. B. 93.

PANDECTS, civil law. The name of an abridgment or compilation of the civil law, made by order of the emperor Justinian, and to which he gave the force of law. It is also known by the name of Digest. (q. v.)

PANEL, practice. A schedule or roll containing the names of jurors, summoned by virtue of a writ of venire facias, and annexed to the writ. It is returned into the court whence the venire issued. Co. Litt. 158, b.

PANNEL, Scotch law. A person, accused of a crime; one indicted.

PAPER−BOOK, practice. A book or paper containing an abstract of all the facts and pleadings necessary, to the full understanding of a case.

2. Courts of error and other courts, on arguments, require that the judges shall each be furnished with such a paper−book in the court of king's bench, in England, the transcript containing the whole of the proceedings, filed or delivered between the parties, when the issue joined, in an issue in fact, is called the paper−book. Steph. on Pl. 95; 3 Bl. Com. 317; 3 Chit. Pr. 521; 2 Str. 1131, 1266; 1 Chit. R. 277 2 Wils, R. 243; Tidd, Px. 727.

PAPER DAYS, Eng. law. Days on which special arguments are to take place. Tuesdays and Fridays in term time are paper days appointed by the court. Lee's Dict. of Pr. h. t.; Arch. Pr. 101.

PAPER MONEY. By paper money is understood the engagements to pay money which are issued by governments and banks, and which pass as money. Pardes. Dr. Com. n. 9. Bank notes are generally considered as cash, and win answer, all the purposes of currency; but paper money is not a legal tender if objected to. See Bank note, Specie, Tender.

PAR, comm. law. Equal. It is used to denote a state of equality or equal value. Bills of exchange, stocks, and the like, are at par when they sell for their nominal value; above par, or below par, when they sell for more or less.

PARAGE. Equality of name or blood, but more especially of land in the partition of an inheritance among co−heirs, hence comes disparage and disparagement. Co. Litt. 166.

PARAGIUM. A Latin term which signifies equality. It is derived from the adjective par, equal, and made a substantive by the addition of agium; 1 Tho. Co. Litt. 681.

2. In the ecclesiastical law, by paragium is understood the portion which a woman gets on her marriage. Ayl. Par. 336.

PARAMOUNT. That which is superior.

2. It is usually applied to the highest lord of the fee, of lands, tenements, or hereditaments. F. N. B. 135. Where A lets lands to B, and he underlets them to C, in this case A is the paramount, and B is the mesne landlord. Vide Mesne, and 2 Bl. Com. 91; 1 Tho. Co. Litt. 484, n. 79; Id. 485, n. 81.

PARAPHERNALIA. The name given to all such things as a woman has a right to retain as her own property, after her hushand's death; they consist generally of her clothing, jewels, and ornaments suitable to her condition, which she used personally during his life.

2. These, when not extravagant, she has a right to retain even against creditors; and, although in his lifetime the hushand might have given them away, he cannot bequeath such ornaments and jewels by his will. 2 Bl. Com. 430; 2 Supp. to Ves. jr. 376; 5 Com. Dig. 230; 2 Com. Dig. 212; 11 Vin. Ab. 176; 4 Bouv. Inst. n. 8996−7.

PARATITLA, civil law. An abbreviated explanation of some titles or books of the Code or Digest.

PARATUM HABEO. A return made by the sheriff to a capias ad respondendum, which signified that he had the defendant ready to bring into court. This was a fiction where the defendant was at large. Afterwards be was required by statute to take bail from the defendant, and he returned cepi corpus and bail bond. But still he might be ruled to bring in the body. 7 Penn. St. Rep. 535.

PARAVAIL. Tenant paravail is the lowest tenant of the fee, or he who is the immediate tenant to one who holds of another. He is called tenant paravail, because it is presumed he has the avails or profits of the land. F. N. B. 135; 2 Inst, 296.

PARCEL, estates. Apart of the estate. 1 Com. Dig. Abatement, H 511 p. 133; 5 Com. Dig. Grant, E 10, p. 545. To parcel is to divide an estate. Bac, Ab. Conditions, 0.

PARCENARY. The state or condition of holding title to lands jointly by parceners, before the common inheritance has been divided. Litt. sec. 56. Vide 2 Bl. Com. 187; Coparcenary; Estate In coparcenary.

PARCENERS, Engl. law. The daughters of a man or woman seised of lands and tenements in fee simple or fee tail, on whom, after the death of such ancestor, such lands and tenements descend, and they enter. Litt. s. 243; Co. Litt. 164 2 Bouv. Inst. n. 1871−2. Vide Coparceners.

PARCO FRACITO, Engl. law. The name of a writ against one who violently breaks a pound, and takes from thence beasts which, for some trespass done, or some other just cause, were lawfully impounded.

PARDON, crim. law, pleading. A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. 7 Pet. S. C. Rep. 160.

2. Every pardon granted to the guilty is in derogation of the law; if the pardon be equitable, the law is, bad; for where legislation and the administration of the law are perfect, pardons must be a violation of the law, But as human actions are necessarily imperfect, the pardoning power must be vested somewhere in order to prevent injustice, when it is ascertained that an error has been committed.

3. The subject will be considered with regard, 1. To the kinds of pardons. 2. By whom they are to be granted. 3. For what offences. 4. How to be taken advantage of 5. Their effect.

4. − _1, Pardons are general or special. 1. The former are express, when an act ofthe legislature is passed expressly directing that offences of a certain class; shall be pardoned, as in the case of an act of amnesty. See

Amnesty. A general pardon is implied by the repeal of a penal statute, because, unless otherwise provided by law, an offence against such statute while it was in force cannot be punished, and the offender goes free. 2 Overt. 423.

2. Special pardons are those which are granted by the pardoning power for particular cases.

5. Pardons are also divided into absolute and conditional. The former are those which free the criminal without any condition whatever; the. fatter are those to which a condition is annexed, which must be performed before the pardon can have any effect. Bac. Ab. Pardon, E; 2 Caines, R. 57; 1 Bailey, 283; 2 Bailey 516. But see 4 Call, R. 85.

6. − _2. The constitution of the United States gives to the, president in general terms, "the power to grant reprieves and pardons for offences against the United States." The same power is given generally to the governors of the several states to grant pardons for crimes committed against their respective states, but in some of them the consent of the legislature or one of its branches is required.

7. − _3. Except in the case of impeachment, for which a pardon cannot be granted, the pardoning power may grant a pardon of all offences against the government, and for any sentence or judgment. But such a pardon does not operate to discharge the interest which third persons may have acquired in the judgment; as, where a penalty was incurred in violation of the embargo laws, and the custom house officers became entitled to one−half of the penalty, the pardon did not discharge that. 4 Wash. C. C

R. 64. See 2 Bay, 565; 2 Whart. 440; 7 J. J. Marsh. 131.

8. − _4. When the pardon is general, either by an act of amnesty, or by the repeal of a penal law, it is not necessary to plead it, because the court is bound, ex officio, to take notice of it. And the criminal cannot even waive such pardon, because by his admittance, no one can give the court power to punish him, when it judicially appears there is no law to do it. But when the pardon is special, to avail the criminal it must judicially appear that it has been accepted, and for this reason it must be specially pleaded. 7 Pet. R. 150, 162.

9. − _5. The effect of a pardon is to protect from punishment the criminal for the offence pardoned, but for no other. 1 Porter, 475. It seems that the pardon of an assault and battery, which afterwards becomes murder by the death of the person beaten, would not operate as a pardon of the murder. 12 Pick. 496. In general, the effect of a full pardon is to restore the convict to all his rights. But to this there are some exceptions: 1st. When the criminal has been guilty of perjury, a pardon will not qualify him to be a witness at any time afterwards. 2d. When one was convicted of an offence by which he became civilly dead, a pardon did not affect or annul the second marriage of his wife, nor the sale of his property by persons appointed to administer on his estate, nor divest his heirs of the interest acquired in his estate in consequence of his civil death. 10 Johns. R. 232, 483.

10. − _6. All contracts, made for the buying or procuring a pardon for a convict, are void. And such contracts will be declared null by a court of equity, on the ground that they are opposed to public policy. 4 Bouv. Inst. n. 3857. Vide, generally, Bac. Ab. h. t.; Com. Dig. h. t.; Nels. Ab. h. t.; Vin. Ab. h. t.; 13 Petersd. Ab. h. t.; Dane's Ab. h. t.; 3 lust. 233 to 240; Hawk. b. 2, c. 37; 1 Chit. Cr. L. 762 to 778; 2 Russ. on Cr. 595 Arch. Cr. Pl. 92; Stark. Cr. Pl. 368, 380.

PARENTAGE. Kindred. Vide 2 Bouv. Inst. n. 1955; Branch; Line.

PARENTS. The lawful father and mother of the party spoken of. 1 Murph. R. 336; 11 S. & R. 93.

2. The term parent differs from that of ancestor, the latter embracing not only the father and mother, but every per ascending line. It differs also from predecessor, which is applied to corporators. Wood's Inst. 68; 7 Ves. 522; 1 Murph. 336; 6 Binn. 255. See Father; Mother.

3. By the civil law grandfathers and grandmothers, and other ascendants, were, in certain cases, considered parents. Dict. de Jurisp. Parente. Vide 1 Ashm. R. 55; 2 Kent, Com. 159; 5 East, R. 223; Bouv. Inst. Index, h. t.

PARES. A man's equals; his peers. (q. v.) 3 Bl. Com. 349.

PARES CURIE, feudal law, Those vassals who were bound to attend the lord's court were so called. Ersk. Inst. B. 2, tit. 3, s. 17.

PARI DELICTO crim. law. In a similar offence or crime; equal in guilt. A person who is in pari delicto with another, differs from a particeps criminis in this, that the former always includes the latter but the latter does not always include the former. 8 East, 381, 2.

PARI MATERIA. Of the same matter; on the same subject; as, laws pari materia must be construed with reference to each other. Bac. Ab. Stat. I. 3.

PARI PASSU. By the same gradation.

PARISH. A district of country of different extents. In the ecclesiastical law it signified the territory committed to the charge of a parson, vicar, or other minister. Ayl. Parerg. 404; 2 Bl. Com. 112. In Louisiana, the state is divided into parishes.

PARIUM JUDICIUM. The trial by jury , or by a man's peers, or equals, is so called.

PARK, Eng. law. An enclosed chase (q.v.) extending only over a man's own grounds. The term park signifies an enclosure. 2 Bl. Com. 38.

PARLIAMENT. This word, derived from the French parlement, in the English law, is used to designate the legislative branch of the government of Great Britain, composed of the house of lords, and the house of commons.

2. It is an error to regard the king of Great Britain as forming a part of parliament. The connexion between the king and the Iords spiritual, the lords temporal, and the commons, which, when assembled in parliament, form the, three states of the realm, is the same as that which subsists between the king and those states − the people at large − out of parliament; Colton's Records, 710; the king not being, in either case, a member, branch, or coestate, but standing solely in the relation of sovereign or head. Rot. Par. vol. iii,. 623 a.; 2 Mann. & Gr. 457 n.

PAROL. More properly parole. A French word, which means literally, word or speech. It is used to distinguish contracts which are made verbally or in writing not under seal, which are called, parol. contracts, from those which are under seal which bear the name of deeds or specialties (q. v.) 1 Chit. Contr. 1; 7 Term. R. 3 0 351, n.; 3 Johns. Cas. 60; 1 Chit. Pl. 88. It is proper to remark that when a contract is made under seal, and afterwards it is

modified verbally, it becomes wholly a parol contract. 2 Watts, 451; 9 Pick. 298; 13 Wend. 71.

2. Pleadings are frequently denominated the parol. In some instances the term parol is used to denote the entire pleadings in a cause as when in an action brought against an infant heir, on an obligation of his ancestors, he prays that the parol may demur, i. e., the pleadings may be stayed, till he shall attain full age. 3 Bl. Com. 300; 4 East, 485 1 Hoffm. R. 178. See a form of a plea in abatement, praying that the parol may demur, in 1 Wentw. Pl. 43; and 2 Chit. Pl. 520. But a devisee cannot pray the parol to demur. 4 East, 485.

3. Parol evidence is evidence verbally delivered by a witness. As to the cases when such evidence will be received or rejected, vide Stark, Ev. pt. 4, p. 995 to 1055; 1 Phil. Ev. 466, c. 10, s. 1; Sugd. Vend. 97.

PAROL LEASES. An agreement made verbally, not in writing, between the parties, by which one of them leases to the other a certain estate.

2. By the English statute of frauds of 29 Car. III, c. 3, s. 1, 2, and 3, it is declared, that "all leases, estates, or terms of years, or any uncertain interest in lands, created by livery only, or by parol, And not put in writing, and signed by the party, should have the force and effect of leases or estates at will only, except leases not exceeding the term of three years, whereupon the rent reserved during the term shall amount to two third parts of the full improved value of the thing demised." "And that no lease or estate, either of freehold or term of years, should be assigned, granted, or surrendered, unless in writing." The principles of this statute have been adopted with some modifications, in nearly all the states of the Union. 4 Kent, Com. 95; 1 Hill. Ab. 130

PAROLE, international law. The agreement of persons who have been taken by an enemy that they will not again take up arms against those who captured them, either for a limited time, or during the continuance of the war. Vattel, liv. 3, c. 8, _151.

PARRICIDE, civil law. One who murders his father; it is applied, by extension, to one who murders his mother, his brother, his sister, or his children. The crime committed by such person is also called parricide. Merl. Rep. mot Parricide; Dig. 48, 9, 1, 1. 3, 1. 4.

2. This offence is defined almost in the same words in the penal code of China. Penal Laws of China, B. 1, s. 2, _4.

3. The criminal was punished by being scourged, and afterwards sewed in a sort of sack, with a dog, a cock, a viper, and an ape, and then thrown into the sea, or into a river; or if there were no water, he was thrown in this manner to wild beasts. Dig. 48, 9, 9; C. 9, 17, 1, 1. 4, 18, 6; Bro. Civ; . Law, 423; Wood’s Civ. Law, B. 3, c. 10, s. 9.

4. By the laws of France parricide is the crime of him who murders his father or mother, whether they, be the legitimate, natural or adopted parents of the individual, or the murder of any other legitimate ascendant. Code Penal, art. 297. This crime is there punished by the criminal’s being taken to the place of execution without any other garment than his shirt, barefooted, and with his head covered with a black veil. He is then exposed on the scaffold while an officer of the court reads his sentence to the spectators; his right hand is then cut off, and he is immediately put to death. Id. art. 13.

5. The common law does not define this crime, and makes no difference between its punishment, and the punishment of murder. 1 Hale’s P. C. 380; Prin. Penal Law, c. 18, _8, p. 243; Dalloz, Dict. mot Homicide.

PARSON, eccles. law. One who has full possession of all the rights of a parochial church.

2. He is so called because by his person the church, which is an invisible body, is represented: in England he is himself a body corporate it order to protect and defend the church (which he personates) by a the minority, if required to bring Story on Partn. _489. 1 Bouv. Inst. n. 1217. 398; 5 Com. Dig. 346.

PARTICEPS FRAUDIS. fraud. Both parties be in pari delicto is not allowed to allege his own turpitude in such cases, when defendant at law, or prevented from alleging it, when plaintiff in equity, whenever the refusal to execute the contract at law, or the refusal to relieve against it in equity, would give effect to the original purpose, and encourage the parties engaged, in such transactions. 4 Rand. R. 372; 1 Black. R. 363; 2 Freem. 101.

PARTICULAR AVERAGE. This term, partipular average, has been condemned as not being exact. See Average. It denotes, in general, every kind of expense or damage, short of total loss which regards a particular concern, and which is to be borne by the proprietor of that concern alone. Between the insurer and insured, the term includes losses of this description, as far as the underwriter is liable. Particular average must not be understood as a total loss of a part; for these two kinds of losses are perfectly distinct from each other. A total loss of a part may be recovered, where a particular average would not be recoverable. See Stev. on Av. 77.

PARTICULAR AVFRMENT, pleading. Vide Avermzent.

PARTICULAR CUSTOM. A particular custom is one which only affects the inhabitants of some particular district. To be good, a particular custom must possess these requisites: 1. It must have been used so long that the memory of man runneth not to the contrary. 2. It must have been continued. 3. It must have been peaceable. 4. It must be reasonable. 5. It must be certain. 6. It must be consistent with itself. 7. lt must be consistent with other customs. 1 Bl. Com. 74, 79.

PARTICULAR ESTATE. An estate which is carved out of a larger and which precedes a remainder; as, an estate for years to A, remainder to B for life; or, an estate, for life to A, remainder to' B in tail: this precedent estate is called the particular estate. 2 Bl. Com. 165; 4 Kent, Com. 226; 16 Vin. Abr. 216; 4 Com. Dig. 32; 5 Com. Dig. 346.

PARTTICULAR, LIEN, contracts. A right which a person has to retain property in respect of money or labor expended on such particular property. For example, when a tailor has made garments out of cloth delivered to him for the purpose, he is not bound to part with the clothes until his employer, has paid him for his services; nor a ship carpenter with a ship which he has repaired; nor can an engraver be compelled to deliver the seal which he has engraved for another, until his compensation has been paid. 2 Roll. Ab. 92; 3 M. & S. 167; 14 Pick. 332; 3 Bouv. Inst. n. 2514. Vide Lien.

PARTICULARS, practice. The items of which the accounts of one of the parties is composed, and which are frequently furnished to the opposite party in a bill of particulars. (q. v.)

PARTIES, contracts. Those persons who engage themselves to do, or not to do the matters and things contained in an agreement.

2. All persons generally can be parties to contracts, unless they labor under some disability.

3. Consent being essential to all valid contracts, it follows that persons who want, first, understanding; or secondly, freedom to exercise their will, cannot be parties to contracts. Thirdly, persons who in consequence of their situation are incapable to enter into some particular contract. These will be separately considered.

4. − _1. Those persons who want understanding, are idiots and lunatics; drunkards and infants,

5. − 1. The contracts of idiots and lunatics, are riot binding; as they are unable from mental infirmity, to form any accurate judgment of their actions; and consequently, cannot give a serious and sufficient consideration to any engagement. And although it was formerly a rule that the party could not stultify himself; 39 H. VI. 42; Newl. on Contr. 19 1 Fonb. Eq. 46, 7; yet this rule has been so relaxed, that the defendant may now set up this defence. 3 Camp. 128; 2 Atk. 412; 1 Fonb. Eq. n. d.; and see Highm. on Lun. 111, 112; Long on Sales, 14; 3 Day's Rep. 90 Chit. on Contr. 29, 257, 8; 2 Str. 1104.

6. − 2. A person in a state of complete intoxication has no agreeing mind; Bull. N. P. 172; 3 Campb. 33; Sugd. Vend. 154 Stark. Rep. 126; and his contracts are therefore void, particularly if he has been made intoxicated by the other party. 1 Hen. & Munf. 69; 1 South. Rep. 361; 2 Hayw. 394; see Louis. Code, art. 1781; 1 Clarke's R. 408.

7. − 3. In general the contract of an infant, however fair and conducive to his interest it may be, is not binding on him, unless the supply of necessaries to him be the object of the agreement; Newl. Contr. 2; 1 Eq. Cas. Ab. 286; l Atk. 489; 3 Atk. 613; or unless he confirm the agreement after he shall be of full age. Bac. Abr. Infancy; I 3. But he may take advantage of contracts made with him, although the consideration were merely the infant's promise, as in an action on mutual promises to marry. Bull. N. P. 155; 2 Str. 907; 1 Marsh. (Ken.) Rep. 76; 2 M. & S. 205. See Stark. Ev. pt. iv. page 724; 1 Nott & McCord, 197; 6 Cranch, 226; Com. Dig. Infant; Bac. Abr. Infancy and Age; 9 Vin. Ab. 393, 4; Fonbl. Eq. b. 1 c. 2; _4, note b; 3 Burr. 1794; 1 Mod. 25; Stra. 937; Louis. Code, article 1778.

8. − _2. Persons who have understanding, who, in law, have not freedom to exercise their will, are married women; and persons under duress.

9. − 1. A married woman has, in general, no power or capacity to contract during the coverture. Com. Dig. Baron & Feme, W; Pleader, 2 A 1. She has in legal contemplation no separate existence, her hushand and herself being in law but one person. Litt. section 28; see Chitty on Cont. 39, 40. But a contract made with a married woman, and for her benefit, where she is the meritorious cause of action, as in the instance of an express promise to the wife, in consideration of her personal labor, as that she would cure a wound; Cro. Jac. 77; 2 Sid. 128; 2 Wils. 424; or of a bond or promissory note, payable on the face thereof to her, or to herself and hushand, may be enforced by the hushand and wife, though made during the coverture. 2 M. & S. 396, n. b.; 2 Bl. Rep. 1236; 1 H. Black. 108. A married woman has no original power or Authority by virtue of the marital tie, to bind her bushand by any of

her contracts. The liability of a bushand on his wife's engagements rests on the idea that they were formed by his authority; and if his assent do not appear by express evidence or by proof of circumstances from which it may reasonably, be inferred, he is not liable. 1 Mod. 125; 3 B. & C. 631; see Chitty on Cont. 39 to 50.

10. − 2. Contracts may be avoided on account of duress. See that word, and also Poth. Obl. P. 1, c. 1, s. 1, art. 3, _2.

11. − _3. Trustees, executors, administrators, guardians, and all other, persons who make a contract for and on behalf of others, cannot become, parties to such contract on their own. account; nor are they allowed in any case to purchase the trust estate for themselves. 1 Vern. 465; 2 Atk. 59; 10 Ves. 3; 9 Ves. 234; 12 Ves. 372, 3 Mer. Rep. 200; 6 Ves. 627; 8 Bro. P. C. 42 10 Ves. 381; 5 Ves. 707; 13 Ves. 156; 1 Pet. C. C. R. 373; 3 Binn. 54; 2 Whart. 53; 7 Watts, 387; 13 S. & R, 210; 5 Watts, 304; 2 Bro. C. C. 400; White's L. C. in Eq. *104−117; 9 Paige, 238, 241, 650, 663; 1 Sandf. R. 251, 256; 3 Sandf. R. 61; 2 John. Ch. R. 252; 4 How. S. C. 503; 2 Whart. 53, 63; l5 Pick. 24, 31. As to the transactions between attorneys and others in relation to client's property, see 2 Ves. jr. 201; 1 Madd. Ch. 114; 15 Ves. 42; 1 Ves. 379; 2 Ves. 259. The contracts of alien enemies may in, general be avoided, except when made under the license of the government, either express or implied. 1 Kent, Com. 104. See 15 John. 6; Dougl. 641. As to the persons who make contracts in equity, see Newl. Cont. c. 1, pp. l to 33.

PARTIES TO ACTIONS. Those persons who institute actions for the recovery of their rights, and those persons against whom they are instituted, are the parties to the actions; the former are called plaintiffs, and the latter, defendants. The term parties is understood to include all persons who are directly interested in the subject−matter in issue, who have right to make defence, control the proceeding, or appeal from the judgment. Persons not having these rights are regarded as strangers to the cause. 20 How. St. Tr. 538, n.; Greenl. Ev. _523

2. It is of the utmost importance in bringing actions to have proper parties, for however just and meritorious the claim may be, if a mistake has been made in making wrong persons, either plaintiffs or defendants, or including too many or too few persons as parties, the plaintiff may in general be defeated.

3. Actions are naturally divided into those which arise upon contracts, and those which do not, but accrue to the plaintiff in consequence of some wrong or injury committed by the defendant. This article will therefore be divided into two parts, under which will be briefly considered, first, the parties to actions arising upon contracts; and, secondly, the parties to actions arising upon injuries or wrongs, unconnected with contracts, committed b the defendant.

4. − Part I. Of parties to actions arising on contracts. These are the plaintiffs and the defendants.

5. − Sect. 1. Of the plaintiffs. These will be considered as follows:

_1. Between the original contracting parties. An action. on a contract, whether express or implied, or whether it be by parol, or under seal, or of record, must be brought in the name of the party in whom the legal interest is vested. 1 East, R. 497; and see Yelv. 25, n. l; 13 Mass. Rep. 105; 1 Pet. C. C. R. 109; 1 Lev. 235; 3 Bos. & Pull. 147; 1 Ii. Bl. 84; 5 Serg. & Rawle, 27; Hamm. on Par. 32; 2 Bailey's R. 55; 16 S. & R. 237,; 10 Mass. 287; 15 Mass. 286 10 Mass. 230; 2 Root, R. 119.

6.− _2. Of the number of plaintiffs who must join. When a contract is made with several, if their legal interests were joint, they must all, if living, join in the action for the breach of the contract. 1 Saund. 153, note 1; 8 Serg. & Rawle, 308; 10 Serg. & Rawle, 257; 10 East, 418; 8 T. R. 140; Arch. Civ. Pl. 58; Yelv. 177, note 1. But dormant partners need not join their copartners. 8 S. & R. 85; 7 Verm. 123; 2 Verm. 65; 6 Pick. 352; 4 Wend. 628; 8 Wend. 666; 3 Cowen, 84; 2 Harr. & Gill, 159. When a contract is made and a bond is given to a firm by a particular name, as A B and Son, the suit must be brought by the actual partners, the two sons of A B, t−he latter having been dead several years at the time of making the contract. 2 Campb. 548. When a person who has no interest in the contract is joined with those who have, it is fatal. 19 John. 213 2 Penn. 817; 2 Greenl. 117.

7. − _3. When the interest of the contract has been assigned. Some contracts are assignable at law; when these are assigned, the assignee may maintain an action in his own name. Of this kind are promissory notes, bills of exchange, bail−bonds, replevin−bonds; Hamm. on Part. 108; and covenants running with the land pass with the tenure, though not made with assigns. 5 Co. 24; Cro. Eliz., 552; 3 Mod. 338; 1 Sid. 157; Hamm, Part. 116; Bac. Abr.; Covenant, E 5. When a contract not is signable at law has been assigned, and a recoverly on such contract is sought, the action must be in the name of the assignor for the use of the assignee.

8. − _4. When one or more of several obligees, &c., is dead. When one or more of several obligees, covenantees, partners or others, haviug a joint interest in the contract; not running with the land, dies, the action must be brought in the name of the survivor, and that fact averred in the declaration. 1 Dall. 65, 248; 1 East, R. 497; 2

John. Cas. 374; 4 Dalt. 354; Arch. Civ. Pl. 54, 5; Addis. on Contr. 285; 1 Chan. Rep. 31; Yelv. 177.

9. − _5. In the case o executors and administrators. When a personal contract, or a covenant not running with the land, has been made with one person only, and he is dead, the action for the breach of it must be brought in the name of the executor or administrator in whom the legal interest in the contract is vested; 2 H. Bl. 310; 3 T. R. 393; and all the executors or administrators must join. 2 Saund. 213; Went.95; 1 Lev.161; 2 Nott & McCord, 70; Hamm. on Part. 272.

10. − _6. In the case of bankruptcy or insolvency. In the case of the bankruptcy or insolvency of a person who is beneficially interested in the performance; of a contract made before the act of bankruptcy or before, the assignment under the insolvent laws, the action should be brought in the name of his assignees. 1 Chit. Pl. 14; 2 Dall. 276; 3 Yeates, 520; 7 S. & R. 182; 5 S. & R. 394; 9 S, & R. 434. See 3 Salk. 61; 3 T. R. 779; Id. 433; Hamm. on Part. 167; Com. Dig. Abatement, E 17.

11. − _7. In case of marriage. This part of the subject will be considered with reference to tbose cases. 1st. When the hushand and wife, must join. 2d. When the hushand must sue alone. 3d. When the wife must sue alone. 4th. When they may join or not at their election. 5th. Who is to sue in the case of the death of the hushand or wife. 6th. When a woman marries, lis pendens.

12. − 1. To recover the chose in action of the wife, the hushand must, in general, join, when the cause of action would survive. 3 T. R. 348; 1 M. & S. 180; Com. Dig. Baron & Feme, V; Bac. Ab. Baron & Feme, K; 1 Yeates' R. 551; 1 P. A. Browne's R. 263; 1 Chit. Pl. 17.

13. − 2. In general the wife cannot join in any action upon a contract. made during coverture, as for work and labor, money lent, or goods sold by her during that time, 2 Bl. Rep. 1239; and see 1 Salk. 114; 2 Wils. 424.; 9 East, 412; 1 Str. 612; 1 M. & S. 180; 4 T. R. 516; 3 Lev. 103; Carth. 462; Ld. Raym. 368; Cro, Eliz. 61; Com. Dig. Baron & Feme, W.

14. − 3. When the hushand is civiliter mortuus, see 4 T. Rep. 361; 2 Bos. & Pull. 165; 4 Esp. R. 27; 1 Selw. N. P. 286; Cro. Eliz. 1519; 9 East, R. 472; Bac. Ab. Baron & Feme, M.; or, as has been decided in England, when he is an alien and has left the country, or has never been in it, the wife may, on her own separate contracts, sue alone. 2 Esp. R. 544; 1 Bos. & Pull. 357; 2 Bos. & Pull. 226; 1 N. R. 80; 11 East, R. 301; 3 Camp. R. 123; 5 T. R. 679. But the rights of such hushand being only suspended, the disability may be removed, in one case, by a pardon, and, in the other, by the hushand's return, and then: he must be joined. Broom on Part. s. 114.

15. − 4. When a party being indebted to a wife dum sola, after the marriage gives a bond to the hushand and wife in consideration of such debt, they may join, or the hushand may sue alone on such contract. 1 M. & B. 180; 4 IT. R. 616 1 Chit. Pl. 20.

16. − 5. Upon the death of the wife, if the hushand survive, he may sue for, anything he became entitled to during the coverture; as for rent accrued to the wife during the coverture. 1 Rolle's Ab. 352, pl. 5; Com. Dig. Baron & Feme, Z; Co. Litt. 351, a, n. 1. But the hushand cannot sue in his own right for the choses in action of the wife, belonging to her before coverture. Hamm. on Part. 210 to 215.

17. When the wife survives the hushand, she may sue on all contracts entered into with her before coverture, which remain unsatisfied; and she may recoverall arrears of rent of her real estate, which became due during the coverture, or their joint demise. 2 Taunt. 181; 1 Roll's Ab. 350 d.

18. − 6. When a suit is instituted by a single woman, or by her and others, and she afterwards marries, lis pendens, the suit abates. 1 Chit. Pl. 437; 14 Mass. R. 295; Brayt. R. 21.

19. − _8. When the plaintiff, is a foreign government, it must have been recognized by the government of this country to entitle it to bring an action. 3 Wheat. R. 324; Story, Eq. Pl. _55. See 4 Cranch, 272; 9 Ves. 347; 10 Ves. 354; 11 Ves. 283; Harr. Dig. 2276.

20. − Sect. 2. Of the defendants. These will be considered in the following order: _1. Between the original parties. The action upon an express contract, must in general be brought against the party who made it. 8 East, R. 12. On implied contracts against the person subject to the legal liability. Ramm. Part. 48; 2 Hen. Bl. 563. Vide 6 Mass. R. 253; 8 Mass. Rep. 198; 11 Mass. R. 335; 6 Binn. R. 234; 1 Chit. Pl. 24.

21. − _2. Of the number of defendants. For the breach of a joint contract made by several parties, they should all be made defendants; 1 Saund: 153, note 1; Id. 291 b, n. 4; even though one be a bankrupt or insolvent. 2 M. & S. 23. Even an infant must be joined, unless the contract as to him be entirely void. 3 Taunt. 307; 5 John R. 160. Vide 5 John. R. 280; 11 John. R. 101; 5 Mass. R. 270; 1 Pick. 500. When a joint contractor is dead, the suit should be brought against the survivor, 1 Saund. 291, note 2. The misjoinder of defendants in an action ex contractu, by

joining one who is not a contractor, is fatal. 3 Conn. 194; Pet. C. C. 16; 2 J. J. Marsh. 88; 1 Breese, 128; 2 Rand. 446; 10 Pick. 281.

22. − 3. In case of a change of credit, and of covenants running with the land, &c. In general in the case of a mere personal contract, the action for the breach of it, cannot be brought against the person to whom the contracting party has assigned his interest, and the original party can alone be sued; for example, if two partners dissolve their partnership, and one of them covenant with the other that he will pay all the debts, a creditor may nevertheless sue both. Upon a covenant running with land, which must concern real property, or the estate therein; 3 Wils. 29; 2 H. Bl. 133; 10 East, R. 130; the assignee of the lessee is liable to an' action for a breach of the covenant after the assignment of the estate to him, and while the estate remaim in him, although he have − not take possession. Bac. Ab. Covenant, E 34; 3 Is. 25; 2 Saund. 304, n. 12; Woodf. L. & T. 113; 7 T. R. 312; Bull. N. P. 159; 3 Salk. 4; 1 Dall. R. 210,; 1 Fonbl. Eq. 359, note y; Hamm. N. P. 136.

23. − _4. When one of several obligers, &c. is dead. When the parties were bound by a joint contract, and one of them dies, his executor or administrator is at law discharged from liability, and the survivor alone can be sued. Bac. Ab. Obligation, D 4; Vin. Ab. Obligation, P 20; Carth. 105; 2 Burr. 1196. And when the deceased was a mere surety, his executors are not liable even in equity. Vide 1 Binn. R. 123.

24. − _5. In the case of executors an administrators. When the contracting party is dead, his executor or administrator, or, in case of a joint contract, the executor or administrator of the survivor, is the party to be made defen−dant. Ham. on Part. 156. On a joint contract, the executors of the deceased contractor, the other surviving, are discharged at law, and no action can be supported against them; 6 Serg. & R. 262; 2 Whart. R. 344; 2 Browne, Rep. 31; and, if the deceased joint contractor was a mere surety, his representatives are not liable either at, law or in equity. 2 Serg. & R. 262; 2 Whart. 344; P. A. Browne's R. 31. All the executors must be sued jointly; when administration is taken on the debtor's estate, all his administrators must be joined, and if one be a married woman, her hushand must also be a party. Cro. Jac. 519.

25. − _6. In the case of bankruptcy or insolvency. A discharged bankrupt cannot be sued. A discharge under the insolvent laws does not protect the property of the insolvent, and he may in general be sued on his contracts, though he is not liable to be arrested for a debt which was due and not contingent at the date. of his discharge. Dougl. 93; 8 East, R. 311; 1 Saund. 241, n. 5; Ingrah. on Insol. 377.

26. − _7. In case of marriage. This head will be divided by considering, 1. When the bushand and wife must be joined. 2. When the hushand must be sued, alone. 3. When the wife must be sued alone. 4. When the hushand and wife may be joined or not at the election of the plaintiff. 5. Who is to be sued in case of the death of the hushand or wife. 6. Of actions commenced against the wife dum sola, which are pending at her marriage.

27. − 1. When a feme sole who has entered into a contract marries, the hushand and wife must in general be jointly sued. 7 T. R. 348; All. 72; 1 Keb. 281; 2 T. R. 480; 3 Mod. 186; 1 Taunt. 217; 7 Taunt. 432; 1 Moore, 126; aid, s6e 8 Johns. R. 2d ed. 115.; 15 Johns. R. 403, 483; 17 Johns. Rep, 16't;− 7 Mass. R. 291 − Com. Dig. Pleader, 2 A 2−; 1 Bingh. R. 60. But if the hushand be away, or live separate from his wife, she may, on a contract of which she is the meritorious cause, bring an action in the Paine of her hushand, on indemnitying the latter for costs. 4 B. & A. 419; 2 C. & M. 388 Addis. on Contr. 342. And, on such contract, she may sue as a feme sole when her hushand is civiliter inortu'us. Addis. on Contr. 342 1 Salk. 116; 1 Lord Raym. 147; 2 M. & W. 65; Moore, 851.

28. − 2. When the wife cannot be considered either in person, or property as creating the cause of action, as in the case of a mere personal contract made during the coverture, the hushand must be sued alone. Com. Dig. Pleader, 2 A 2; 8 T. R. 545; 2 B. & P. 105; Palm. 312; 1 Taunt. 217; 4 Price, 48; 16 Johns. R. 281.

29. − 3. The wife can in general be sued alone, in the same cases where she can sue alone, the cases being reversed.

30. − 4. When the hushand, in consequence of some new consideration, undertakes to pay a debt of the wife dum sola, he may be sued alone, or the hushand and wife. may be made joint defendants. All. 73; 7 T. R. 349; vide other cases in Com. Dig. Baron & Feme, Y; 1 Rolle's Ab. 348, pl. 45, 50; Bac. Ab. Baron & Feme, L.

31. − 5. Upon the death of the wife, her executor, when she has appointed one under a power, or her administrator, is alone responsible for a debt or duty she contracted dum sola. The hushand, as such, is not liable. Com. Dig. Baron & Feme, 2 C; 3 Mod. 186; Rep. Temp. Talb. 173; 3 P. Wms. 410. When the wife survives, she may be sued for her contracts made before coverture. 7 T. R. 350; 1 Camp. R. 189.

32. − 6. When a single woman, being sued, marries Iis pendens, the plaintiff may proceed to judgment, as if she

were a feme sole. 2 Rolle's R. 53; 2 Str, 811.

33. Part 2. Of parties to actions in form ex delicto. These are plaintiffs and defendants.

34. − Sect. 1. Of plaintiffs. These will be separately, considered as follows:

35. − _1. With reference to the interest. Of the plaintiff. The action for a tort must, in general, be brought in the name of the party whose legal right has been affected, 8 T. R. 330; vide 7 T. R. 47; 1 East, R. 244; 2 Saund. 47 d; Hamm. on Part. 35, 6; 6 Johns. R. 195;.10 Mass. R. 125 10 Serg. & Rawle, 357.

36. − _2. With reference to the number of plaintiffs. It is a general rule that when an injury is done to the property of two or more joint owners, they must join in the action; and even when the property is several, yet when the wrong has caused a joint damage, the parties must join in the action. 1 Saund. 291, g. When suits are brought by tenants in common, against strangers for the recovery of the land, inasmuch as they have several titles, they cannot agreeably to the rules of the common law, join, but must bring separate actions; and this seems to be the rule in Missouri. 1 Misso. R. 746. This rule has been changed in some of the states. In Connecticut, when the plaintiff claims on the title of all the tenants, he recovers for their benefit, and his possession will be theirs. 1 Swift's Dig. 103. In Massachusetts, Mass. Rev. St. 611, and Rhode Island, R. I. Laws, 208, all the tenants or any two may join or any one may sue alone. In Tennessee they usually join. 2 Yerg. R. 228.

37. When personal reputation is the object affected, two or more cannot join as plaintiffs in the action, although the mode of expression in which the slander was couched comprehended them all; as when a man addressing himself to three, said, you have murdered Peter. Dyer, 191, pl. 112; Cro. Car. 510; Goulds. pl. 6, p. 78. The reason of this is obvious, no one has any interest in the character of the others, the damages are, therefore, several to each.

38. − _3. In general, rights or causes of action arising ex delicto are not assignable.

39. − _4. When one of several parties who had an interest is dead. In such case the action must be instituted by the survivor. 1 Show. 188; S. C. Carth. 170.

40. − _5. When the party injured is dead. The executors or administrators cannot in general recover damages for a tort, when the, action must be ex delicto, and the plea to it is not guilty. Vide the article Actio personalis moritur cum persona, where the subject is more fully examined.

41. − _6. In case of insolvency. The statutes generally authorize the trustee or assignee of an insolvent to institute a suit in his own name for the recovery of the rights and property of the insolvent. 6 Binn. 189; 8 Serg. & Rawle, 124. But for torts to the person of the insolvent, as for slander, the trustee or assignee cannot sue. W. Jones' Rep. 215.

42.− _7. When the tort has been committed, against a woman dum sola who afterwards married. A distinction is made between those injuries committed before and those which take place during coverture. For injuries to the person, personal or real property of the wife, committed before coverture, when the cause of action would survive to the wife, she must join in the action. 3 T. R. 627; Rolle's Ab. 347; Com. Dig. Baron & Feme, V. For an injury to the person of the wife during coverture, by battery, or to her character, by slander, or for any other such injury, the wife must be joined with her hushand in the suit; when the injury is such that the hushand receives a separate damage or loss, as if in consequence of the battery, he has been deprived of her society or been put to expense, he may bring a separate action, in his own name; and for slander of the wife, when words are not actionable of themselves, and the hushand has received some special damages, the hushand must sue alone. 1 Lev. 140; 1 Salk. 119; 3 Mod. 120.

43. − Sect. 2. Of the defendants. _1. Between the orginal parties. All natural persons are liable to be sued for their tortious acts, unconnected with or in disaffirmance of a contract; an infant is, therefore, equally liable with an adult for slander, assaults aud batteries, and the like; but the plaintiff cannot bring an action ex delicto which arose out of a contract, and by that means charge an infant for a breach of a contract. The form is of no consequence; the only question is whether the action arose out of contract or otherwise. A plaintiff who hired a horse to an infant, and the infant by hard, improper and injudicious driving, killed the horse,, cannot maintain an action ex delicto to recover damages for a breach of this contract. 8 Rawle's R. 351; 6 Watts' R. 9; 8 T. R. 385; Hamm. N. P. 267. But see contra, 6 Cranch,226; 15 Mass. 359; 4 McCord, 387. Vide Infant.

44. − _2. As to the number of defendants. There are torts which, when committed by several, may authorize a joint action against all the parties; but when in legal contemplation several cannot concur in the act complained of, separate actions must be brought against each; the cases of several persons joining in the publication of a libel, a malicious prosecution, or an assault and battery, are cases of the first kind verbal slander is of the second. 6

John. R: 32. In general, When the parties have committed a tort which might be committed by several, they may be jointly sued, or the plaintiff may sue one or more of them and not sue the others, at his election. Bac Ab. Action Qui Tam, D; Roll. Ab. 707; 3 East, R. 62.

45. − _3. When the interest has been assigned. A liability for a tort cannot well be assignee; but an estate may be assigned on which was erected a nuisance, and the assignee will be liable for continuing it, after having possession of the estate. Com. Dig. Case, Nuisauce, B; Bac. Ab. Actions, B; 2 Salk. 460; 1 B. & P. 409.

46.− 4. When the wrongdoer is dead. In this case the remedy for wrongs ex delicto, and unconnected with contract, cannot in general be maintained. Vide Actio personalis moritur cum persona.

47. − _5. In case of insolvency. Insolvency does not discharge the right of action of the plaintiff in any case; it merely liberates the defendant from arrest when he has received the benefit of, and been discharged under, the insolvent laws; an insolvent may therefore be sued for his torts committed before his discharge.

48. − _6. In case of marriage. Marriage does not affect or change the liabilities of the hushand and he is alone to be sued for his torts committed either before or during the coverture. But it is otherwise with the wife; after her marriage she has no personal property to pay the damages which may be recovered, and she cannot even appoint an attorney to defend her. For her torts committed by her before the marriage, the action must be against the hushand and wife jointly. Bac. Ab. Baron and Feme, L; 5 Binn. 43. They must also be sued jointly for the torts of the wife during the coverture, as for slander, assault and battery, &c. Bac. Ab. Baron and Feme, L. See, generally, as, to parties to actions,, 3 United States Dig. Pleading, I, and Promissory Note, XVI.; Bouv. Inst. Index, h. t.

PARTIES TO A SUIT IN EQUITY. The person who seeks a remedy in chancery by suit, commonly called a plaintiff, and the person against whom the remedy is sought, usually denominated the defendant, are the parties to a suit in equity.

2. It is of the utmost importance, that there should be proper parties; and therefore no rules connected with the science of equity pleading, are so necessary to be attentively considered and observed, as those which relate to the persons who are to be made parties. to a suit, for when a mistake in this respect is discovered at the hearing of the cause, it may sometimes be attended with defeat, and will, at least, be followed by delay and expense. 3 John. Ch. R. 555; 1 Hopk. Ch. R. 566; 10 Wheat. R. 152.

3. A brief sketch will be here given by considering, 1. Who may be plain−tiffs. 2. who may be made defendants. 3. The number of the parties.

4. − _1. Of the plaintiff. Under this head will be considered who may sue in equity: and,

5. − 1. The government, or as the style is in England, the crown) may sue in a court of equity, not only in suits strictly on behalf of the government, for its own peculiar rights and interest, but also on behalf of the rights and interest of those, who partake of its prerogatives, or claim its peculiar protection. Mitf. Eq. Plead. by Jeremy, 4, 21−24; Coop. Eq. 21, 101. Such suits are usually brought by the attorney general.

6.− 2. As a general rule all persons, whether natural or artificial, as corporations, may sue in equity; the exceptions are persons who are not sui juris, as a person not of full age, a feme covert, an idiot, or lunatic.

7. The incapacities to sue are either absolute, or partial.

8. The absolute, disable the party to sue during their continuance; the partial, disable the party to sue by himself alone, without the aid of another. In the United States, the principal ab solute incapacity, is alienage. The alien, to be disabled to sue in equity, must be an alien enemy, for an alien friend may sue in chancery. Mitf. Equity, PI, 129; Coop. Equity Pl. 27. But still the subject matter of the suit may. disable an alien to sue. Coop. Eq. Pl. 25; Co. Lit. 129 b. An alien sovereign or an alien corporation may maintain a suit in equity in this country. 2 Bligh's Rep. 1, N. S.; 1 Dow. Rep.. 179, N. S.; 1 Sim. R. 94; 2 Gall. R. 105; 8 Wheat. Rep. 464; 4 John. Ch. Rep. 370. In case if a foreign sovereign, he must have been recognized by the government of this country before he can sue. Story's Eq. pl. _55; 3 Wheat. Rep. 324; Cop. Eq. Pl. 119

9. Partial incapacity to sue exists in the case of infants, of married women, of idiots and lunatics, or other persons who are incapable, or are by law specially disabled to sue in their own names; as for example, in Pennsylvania, and some other states, habitual drunkards, who are under guardianship. 10.−1. An infant cannot, by himself, exhibit a bill, not only on account of his want of discretion, but because of his inability to bind himself for costs. Mitf. Eq. Pl. 25. And when an infant sues, he must sue by his next friend. Coop, Eq. 27; 1 Sm. Chan. Pl. 54. But as the next friend may sometimes bring a bill. from improper motives, the court will, upon a proper application, direct the master to make inquiry on this subject, and if there be reason to believe it be not brought for the benefit of the infant, the proceedings will be stayed. 3 P. Wms. 140; Mitf. Eq. Pl. 27; Coop. Eq. Pl. 28.

11. − 2. A feme covert must, generally, join with her hushand; but when he has abjured the realm, been transported for felony, or when he is civilly dead, she may sue as a feme sole. And when she has a separate claim, she may even sue her hushand, with the assistance of a next friend of her own selection. Story's Eq. Pl. _61; Story's Eq. Jur. _1368; Fonbl. Eq. b. 1, c. 2, _6, note p. And the hushand may himself sue the wife.

12. − 3. Idiots and lunatics are generally under the guardianship of persons who are authorized to bring a suit in the idiot's name, by their guardian or committee.

13. − _2. Of the defendant. 1. In general, those persons who may sue in equity, may be sued. Persons sui juris may defend themselves, but those under an absolute or partial inability, can make defence only in a particular manner. A bill may be exhibited against all bodies politic or corporate, against all persons not laboring under any diability, and all persons subject to such incapacity, as infants, married women, and lunatics, or habitual drankards.

14. − 2. The government or the state, like the king in England, cannot be sued. Story, Eq. Pl. _69.

15. − 3. Bodies politic or corporate, like persons sui juris, defend a suit by themselves.

16. − 4. Infants institute a suit, as has been seen, by next friend, but they must defend a suit by guardian appointed by the court, who is usually the nearest relation, not concerned in interest, in the matter in question. Mitf. Eq. Pl. 103; Coop. Eq. Pl. 20, 109; 9 Ves. 357; 10 Ves. 159; 11 Ves. 563; 1 Madd. R. 290; Vide Guardian, n. 6.

17. − 5. Idiots and lunatics defend by their committees, who, in ordinary circumstances, are appointed guardians ad litem, for that purpose, as a matter of course. Mitf. Eq. Pl. 103; Coop. Eq. Pl. 30, 32; Story's Eq. Pl. SS70; Shelf on Lun. 425.; and vide 2 John. Ch. R. 242, where, Chancellor Kent held, that the idiot need not be made a party as defendant to a bill for the payment of his debts, but his committee only. When the idiot or lunatic has no committee, or the latter has an interest adverse to that of the lunatic or idiot, a guardian ad litem will be appointed Mitf. Eq. Pl. 103;; Story's Eq. Pl. _70.

18. − 6. In general, a married woman, when she is sued, must be joined with her hushand, and their answer must also be joint. But there axe exceptions to this rule in both its requirements.

19. − 1. A married woman may be made a defendant, and answer as a feme sole, in some instances, as when her hushand is plaintiff in the suit, and sues her as defendant, and from the like necessity, when the hushand is an exile or has abjured the realm, or has been transported under a criminal sentence, or is an alien enemy. She may be sued and answer as a feme sole. Mitf. Eq. Pl. 104, 105; Coop. Eq. Pl. 30.

20. − 2. When her hushand is joined, or ought to be joined, she cannot make a separate defence, without a special order of court. The following are instances where such orders will made. When a married woman claims as defendant in opposition to her hushand, or lives separate from him, or disapproves of the defence he wishes her to make, she may obtain an order of court for liberty to answer, and defend the suit separately. And when the hushand is abroad, the plaintiff may obtain, an order that she shall answer separately; and, if a woman obstinately refuses to join a defence with her hushand, the latter may obtain an order to compel her to make a separate answer. Mitf. Eq: Pl.: 104; Coop. Eq. Pl. 30; Story's Eq 71.

21. − 3. As to the number of parties. It is a general rule that every person who is at all interested in the subject− matter of the suit, must be made a party. It is, the constant aim of a court of equity, to do complete justice by deciding upon and settling the rights of all persons interested in the subject of the suit, to make the performance of the order of the court perfectly safe to those who are compelled to obey it, and, to prevent future litigation. For this purpose, all persons materially interested in the subject ought to be parties to the suit, plaintiffs or defendants, however numerous they may be, so that a complete decree may be made binding on those parties. Mitford's Eq. Pl. 144; 1 John. Ch. R. 349; 9 John. R. 442; 2 Paige's C. R. 278; 2 Bibb, 184; 3 Cowen's R. 637; 4 Cowen's R. 682 9 Cowen's R. 321; 2 Eq. Cas. Ab. 179; 3 Swans. R. 139. When a great number of individuals are interested as in the instance of creditors seeking an account of the estate of their deceased debtor for payment of their demands, a few suing on behalf of the rest may substantiate the suit, and the other creditors may come in under the decree. 2 Ves. 312, 313. In such case the bill should expressly show that it is fifed as well on the behalf of other members as those who are really made the complainants; and the parties must not assume a corporate, name, for if they assume the style of a corporation, the bill cannot be sustained. 6 Ves. jr. 773; Coop. Eq. Pl. 40; 1 John. Ch. R. 349; 13 Ves. jr. 397 16 Ves. jr. 321; 2 Ves. sen. 312 S. & S. 18; Id. 184. In some cases, however, when all the persons interested are, not made parties, yet, if there be such privily between the plaintiffs and defendants, that a complete decree may be made, the want of parties is not a cause of demurrer. Mitf. El q. Pl. 145. Vide Calvert on

Parties to Suits in Equity; Edwards on Parties to Bills in Chancery; Bouv Inst. Index, h. t.

PARTITION, conveyancing. A deed of partition is, one by which lands held in joint tenancy, coparcenary, or in common, are divided into distinct portions, and allotted to the several parties, who take them in severalty.

2. In the old deeds of partition, it was merely agreed that one should enjoy a particular part, and the other, another part, in severalty; but it is now the practice for the parties mutually to convey and assure to each other the different estates which they are to take in severalty, under the partition. Cruise Dig. t. 32, c. 6, s. 15.

PARTITION, ?states. The division which is made between several persons, of lands, tenements, or hereditaments, or of goods and chattels which belong to them as co−heirs or co−proprietors. The term is more technically applied to the division of real estate made between coparceners, tenants in common or joint tenants.

2. The act of partition ascertanas and fixes what each of the co−proprietors is entitled to have in severalty

3. Partition is either voluntary, or involuntary, by compulsion. Voluntary partition is made by the owners of the estate, and by a conveyance or release of that part to each other which is to be held by him in severalty.

4. Compulsory partition is made by virtue of special laws providing that remedy. "It is presumed," says Chancellor Kent, 4 Com. 360, "that the English statutes of 31 and 32 Henry VIII. have been generally reenacted and adopted in this country, and probably, with increased facilities for partition." In some states the courts of law have jurisdiction; the courts of equity have for a long time exercised jurisdiction in awarding partition. 1 Johns. Ch. R. 113; 1 Johns. Ch. R. 302; 4 Randolph's R. 493; State Eq. Rep. S. C. 106. In Massachusetts, the statute authorizes a partition to be effected by petition without writ. 15 Mass. R. 155; 2 Mass. Rep. 462. In Pennsylvania, intestates' estates, may be divided upon petition to the orphans' court. By the civil code of Louisiana, art. 1214, et seq., partition of a succession may be made. Vide, generally, Cruise's Dig. tit. 32, ch. 6, s. 1 5; Com. Dig. Pleader, 3 F; Id. Parcener, C; Id. vol. viii. Append. h. t. 16 Vin. Ab. 217; 1 Supp. to Yes. jr. 168, 171; Civ. Code of Louis. B. 3, t. 1, c. 8.

5. Courts of equity exercise jurisdiction in cases of partition on various grounds, in cases of such complication of titles, when no adequate remedy can be had at law; 17 Ves. 551; 2 Freem. 26; but even in such cases the remedy in equity is more complete, for equity directs conveyances to be made, by which the title is more secure. "Partition at law, and in equity," says Lord Redesdale, "are very different things. The first operates by the judgment of a court of law, and delivering up possession in pursuance of it, which concludes all the parties to it. Partition in equity proceeds upon conveyances to be executed by the parties; and if the parties be not competent to execute the conveyance, the partition cannot be effectually had." 2 Sch. & Lef. 371. See 1 Hill. Ab. c. 55, where may be found an abstract of the laws of the several states on this subject.

PARTNERS, contracts. Persons who have united together and formed a partnership. 2. Every person sui juris is competent to contract the relation of a partner. An infant may by law be a partner. 5 B & A. 159; but a feme covert, not being capable of contracting, cannot enter into partnership; and altbough married women are not unfrequently entitled to shares in banking houses, and other mercantile concerns, under positive covenants, yet when this happens, their hushands are entitled to such shares, and become partners in their steads. Whether a feme sole trader in Pennsylvania could enter into such contract, seems not settled. See 2 Serg. & Rawle, 189; see also, 2 Nott & McC. R. 242; 2 Bay, 162, 333; Code Civ. par Sirey, art. 220.

3. Partners are considered as ostensible, dormant, or nominal partners. 1. An actual ostensible partner is a party who not only participates, in the profits and contributes to the losses, but.who appears and exhibits himself to the world as a person connected with the partnership, and as forming a component member of a firm. He is clearly answerable for the debts and engagements of, the partnership; his right to a share of the, profits, or the permitted exhibition of his name as partner, would be sufficient to render him responsible. 6 Serg. & Rawle, 259, 337; Barnard. 343; 2 Blackst. R. 998; 17 Ves. 404;. 18 Ves. 301; 1 Rose, 297; 16 Johns. R. 40; 3 Hayw. R. 78.

4. − 2. A dormant partner is one who is a participant in the profile of the trade, but his name being suppressed and concealed from the firm, his interest is consequently not apparent. He is liable as a partner, because he receives and takes from the creditors a part of that fund which is the proper security to them for the satisfaction of debts, and upon which they rely for payment. 16 Johns. R. 40. Another reason assigned for subjecting a dormant partner to responsibility is, that if he were exempted he would receive usurious interest for his capital, without its being attended with any risk. 1 Dougl. 371; 4 East, R. 143; 10 Johns. R. 226; 4 B. & A. 663; 8 Man. Gr. & Scott, 641, 650. But in order to render one liable as a partner, he must receive the profits as such, and not merely his wages; to be paid out of the profits. Vide Profits.

5. − 3. A, nominal partner is one who has not any actual interest in the trade or its profits, but, by allowing his

name to be used, he holds himself out to the world as having an apparent interest. He is liable as a partner, because of these false appearance he holds forth to the world in representing himself to be jointly concerned in interest with those with whom he is apparently associated. 2 H. Bl. 235; 1 Esp. N. P. O. 29; 6 Serg. & R. 338; Watts. Partn. 26.

6. A partner in a private commercial partnership cannot introduce a stranger into the firm as a partner without the consent of all the copartners. If he should attempt to do so, this may make such stranger a partner with the partner who has associated with such third person; this will be a partnership, distinct from the first, and limited to the share of that partner who has so joined himself with another. 2 Rose 255; Domat, de la Societe, tit. 8, s. 2, n. 5.

7. As between the members of a firm and the persons having claims upon it, each individual member is answerable in solido for the amount of the whole of the debts contracted by the partnership, without reference either to the extent of his own separate beneficial interest in the concern, or. to any private arrangement or agreement that may exist between himself and his copartners, stipulating for a restricted responsibility. 1 Ves. & Bea. 157; 9 East, 527; 5 Burr. 2611; 2 Bl. R. 947; 1 East, R. 20; 1 Ves. sen. 497; 2 Desaus. R. 148; 4 Serg. & Rawle, 356; 6 Serg. & Rawle, 333; Kirby, 53, 77, 147. In Louisiana, ordinary partners are not bound in solido for the debts of the partner− ship; Civ. Code of Lo. art. 2843; each partner is bound for his share of the partnership debts, calculating such share in proportion to the number of the partners, without any attention to the proportion of the stock or profits each is entitled to id. art. 2844.

8. Partners are bound by what is done by one in the course of the business of the partnership. Their liability under contracts is commensurate and coextensive with their rights. Although the general rule of law is, that no one is liable upon any contract except such as are privy to it; yet this is not contravened by the liability of partners, as they are imagined virtually present at and sanctioning the proceedings they singly enter. into in the course of trade; or as each is vested with a power enabling him to act, at once as principal and as the authorized agent of his copartners. Wats. Partn. 167; Gow. Partn. 53. It is doubtful, however, whether one can close the business by a general assignment of the partnership property for the benefit of creditors. Pierpont and Lord v. Graham. Cir. Court, April 1820, MS. Whart. Dig. 453, 1st ed.; 4 Wash. C. C. R. 232; see 1 Brock. R. 456; 3 Paige's R. 517; 5 Paige's R. 30; 1 Desaus. R. 537; 4 Day's. R. 425; 5 Cranch, 300; 1 Hoffm. R. 08, 511; Stor. Partn. _101; 2 Washb. R. 390.

9. One partner can, in simple contracts, bind his copartners in transactions relative to the partnership. 7 T. R. 207; 4 Dall. 286; 1 Dall. 269. But a security given by, one partner, in the partnership name, known to be for his individual debt, does not bind the firm. 2 Caines' R. 246; 4 Johns. R. 251; 4 Johns. R. 262, in note; 2 Johns. R. 300; 16 Johns. R. 34; 4 Serg. & Rawle, 397. Nor can one partner bind his copartners by deed; and this both for technical reason and the general policy of the law. Wats. Partn. 218; Gow on Partn. 83; 3 Murph. 321; 4 Sm. & Marsh. 261; 7 N. H. Rep. 549; 1 Pike, 206; 2 Harr. 147; 2 B. Monr. 267; 5 B. Monr. 47; 4 Miss. 417; 1 McMullen, 311; 3 Johns. Cas. 180; Taylor's R. 113; 2 Caines' R. 254; 2 Caines' Err. 1;. 2 Johns. R. 213; 19 Johns. R. 513; 1 Dall. 11,9. But see 6 Watts & Serg. 165, where it is said this rule admits of sorae qualifications. The rule does not however apply to cases where the object is to discharge a debt as due to it; as to give a general release by deed. 3 John. 68; 7 N. H. Rep. 550; 1 Wend. 326; 20 Wend. 251; 22 Wend. 324. It seems to be an admitted principle, that one partner has no power to submit to arbitration any matters whatsoever, concerning or arising out of the partnership business. Story, Partn. _114; Com. Dig. Arbitrament, D 2; 3 Bing. R. 101; 1 C. M. & R. 681; 1 Pet. R. 222; 19 John. R. 137; 3 Kent, Com. 49, 4th ed. But in Pennsylvania, 12 S. & R. 243, and Kentucky, 3 Mont. R. 433, one, partner may by an unsealed, instrument refer any partnership matter to arbitration, though he has no implied authority to consent to an order for a judgment in an action against himself and his copartner. 3 Mann. G. & Scott, 742. Nor has one partner the power to confess a judgment, or authorize the confession of a judgment against the firm, when no writ has been issued against both. 1 Wend. 311; 9 Wend. 437; 1 Blackf. 252; 1 Scamm. 428, 442. Such a judgment, however is binding on the one who confessed it. 2 Bl. R. 1133; 1 Dall. 119; 1 W. & S. 340, 519; 7 W. & S. 142; 2 Caines, 254; 20 Wend. 609; and see 7 Watts, 331; 1 W. & S. 519, 525; 2 Miles, 436; 1 Hoff. Ch. R. 525.

10. With regard to the tight of the majority of, the partners, when there is a dissent among them, it may be laid down, 1. That when there are stipulations on this subject, they must govern. Tum. & Russ. 496, 517. 2. In the absence of all agreement on the subject, each partner has an equal voice, though their interests be different, and a majority have a right to conduct the business. 3 John. Ch. R . 400; 3 Chit. Com. Law, 236; Colly. Partn. B. 2, c. 2, s. 1; Id. B. 3, c. 1, s. 262 − Story, Partn. 123. 3. When there are only two partners, and they dissent, neither can

bind the partnership, when the person with whom they deal has notice of such disagreement. 1 Stark. R. 164. See 1 Camp. R. 403; 10 East, R. 264; 7 Price, Rep. 193; 6 Ves. 777; 16 Vin. Ab. 244. But this right of the majority is confined to transactions in the usual scope of the business, and not to a change of the articles of the partnership, for in such case all the partners must consent, 4 John. Ch. R. 573.

11. The stock used in a joint undertaking by way of partnership in trade, is always considered in common and not as joint property, and consequently there is no survivorship therein; jus accrescendi inter mercatores, pro beneficio commercii, locum non habet. On the death of one partner, therefore, his representatives become tenants in common with the survivor, of all the partnership effects in possession. But with respect to choses in action, survivorship so far exists at law, as that the remedy or right to reduce them into possession vests exclusively in the survivor; although when they are recovered, the representatives of the deceased partner have, in equity, the same right of sharing and participating in them which their testator or intestate would have possessed had he been living. 1 Ld. Raym. 340. See 2 Dall. 65, 66, in note; 1 Dall. 248; 4 Dall. 354; 2 Serg. & Rawle, 494.

12. When real estate is owned by a partnership, it is held by the partners subject in all respects to the ordinary incident's of land held in common. 1 Sumn. R. 174; 7 Conn. 11; 5 Hill, (N. Y.) Rep. 118; 4 Mete. 537. But in equity the partners may by agreement, express or implied, affect real estate with a trust as, a partnership property, and, by that means, render it in, equity subject to the rules applicable to partnership property as between the partners themselves and all claiming under them. 2 Edw. R. 28; 2 Rand. R. 183; 7, S. & R. 438, 441; Conn. 11; 5 Metc. 582; 6 Yerg. 20.

See, generally, as to partners, 5 Com. Dig. Merchant, D; Bac. Abr. Merchant, C; Wats. on Partn. passim; Gow on Partn. passim; Supp. to Ves. jr. vol. 1, p. 36, 279 281, 312, 389, 449, 503; Id. vol. 2, p. 40, 314, 315, 317, 362, 364, 377, 384, 456; 1 Salk. 291, 392; 1 Swanst. R. 506, 9; 10 East R. 265; 4 Ves. 396; 1 Hare & Wall. Sel. Dec. 292, 304; Civ. Code of Lo. B. 3, t. 11; Code Civ. L. 3, t. 9; Code de Proc. Civ. L. 1, t. 3; Chit. Contr. 66 to 82; Poth. Contrat de Soeiete; Bouv. Inst. Index, h. t. Vide Articles of Partnership; Death of. a partner; Dissolution; Firm; Partnership.

PARTNERSHIP, contracts. An agreement between two or more persons, for joining together their money, goods, labor and skill, or either or all of them, for the purpose of advancing fair trade, and of dividing the profits and losses arising from it, proportionably or otherwise, between them. 2 Bouv. Inst. n. 1435; Watson on Partn. 1; Gow on Partn. 2; see Civ. Code of Lo. art. 2772; Code Civ. art. 1832; Forbes. Inst. of Scotch Law, part 2, B. 3, s. 3, p. 184; edit. Edin. 1722, 12mo.; Dolmat, Civ. Law, vol. 1, p. 85; 9. John. R. 488; Puffend. B. 5, c. 8; 2 H. Bl. 246; 1 H. Bl. 37; Ersk. Inst. B. 3, t. 3, _18; Tapia, Elemontos de Jurisp. Mercantil, p. 86; 5 Duv. Dr. Civ. Fr. tit. 9, c. 1, n, 17; 4 Pard. Dr. Com. n. 966; 2 Bell's Com. 611, 5th ed.; Aso & Mann. Inst. B. 2, tit.

15. Sometimes partnership signifies a moral being composed of the reunion of all the partners. 4 Pard. n. 966. As a partnership has a separate existence as a person, it becomes liable to fulfil all its engagements, and the partners are individually bound and responsible only on its default, as sureties. 2 Bell's Comm. B. 6, c. 1, n. 4, p. 619, 5th ed.

2. Partnerships will be considered, 1st. In respect to their character and extent, as they regard property. 2d. With relation to the number and character of parties. 3d. As they are divided by the French code. 4th. As to their creation. 5th. As to their object. 6th. As to their duration. 7th. As to their dissolution. 8th. As to partnerships in Louisiana.

3. − _1. In respect to their character and extent, as they regard property, partnerships maybe divided into three classes, namely: universal partnerships; general partnerships; and limited or special partnerships. 1. A universal partnership is one where the parties agree to bring into the firm all their property, real, personal and mixed, and to employ all their skill, labor, and services, in the trade, or business, for their common benefit. This, kind of partnership is perhaps unknown in the United States. 5 Mason, R. 176.

4. − 2. General partnerships are properly such, where the parties carry on all their trade and business for their joint benefit and profit; and it is not material whether the capital stock be limited or not, or the contributions of the partners be equal or unequal. Cowp. 814. The game appellation is given to a partnership where the parties are engaged in one branch of trade only.

5. − 3. Special partnerships, are those formed for a special or particular branch of business, as contradistinguished from the general business or employment of the parties, or of one of them. When they extend to a single transaction or adventure only, such as the purchase and sale of a particular parcel of goods, they are more commonly called limited partnerships. The appellation is however given to both classes of cases

indiscriminately. Story, Partn. _75

6. − _2. When considered in relation to the number and character of the parties, partnerships are divided into private partnerships and public companies. 1. Private partnerships are those which consist of two or more partners for some private undertaking, trade, or business.

7. _2. Public companies are those where a greater number of persons are concerned, and the stock is divided into a considerable number of shares, the object embracing generally public as well as private interests. This term is, however, perhaps loosely applied, as these companies have for the most part the character of private associations. They are either incorporated or not. The incorporated are to be governed by the rules established in their respective charters. See Corporation. The unincorporated are in general subject, to all the regulations of a common private partnership.

8. − _3. In the French law, partnerships are divided into three kinds, namely: 1. Partnerships under a collective name, that is, where the name of the firm contains the names of all or some of the partners.

9. − 2. Partnerships en commandite or in commendam; these are limited partnerships, where one or more persons are general partners, and are jointly and severally responsible with all their estates, and one or, more other persons who furnish a part or the whole of the capital, who are liable only to the extent of the capital they have furnished. The business is carried on in, the name of the general partners. This species of partnership, with some modifica− tions, has been adopted in several of the states of the American union. 3 Kent, Com. 34, 4th ed.; 2 Bouv. Inst. n. 1473, et seq.

10. − 3. Anonymous partnerships are those in which all the partners are engaged in the business, there is no social name or firm, but a name designating the object of the association. The business is managed by syndics or directors. Vide Poth. de Societe, h. t.; 5, Duv. Dr. Civ., Fr. h. t.; Pardes. Dr: Com. h. t.; Code de Com. h. t.; Merl. Repert. h. t. In Louisiana a similar division has been made. Civ. Code of Lo. h. t.

11. − _4. Partnerships are created by mere act of the parties; and in this they differ from, corporations which require the sanction of public authority, either express or implied. Aug. & Ames on Corp. 23. The consent of the parties may be testified, either in express terms, as by articles of partnership, or positive agreement; or the assent may be tacit, and to be implied solely from the act of the parties. An implied or presumptive assent has equal operation with one that is express and determined. And it may be laid down as a general and undeniable proposition, that persons having a mutual interest in the profits and loss of any business, or particular branch of business, carried on by them, or persons appearing ostensibly to the world as joint traders, are to be recognized and treated as partners, whatever may be the nature of the agreement under which they act, or whatever motive or inducement may prompt them to such an exhibition. 1 Dall. 269. 12. A community of property does not of itself create a partnership, however that property may be acquired, whether by purchase, donation, accession, inheritance or prescription. Civ. Code of Louis. art. 2777. Hence joint tenants or tenants in common of lands, goods, or chattels, under devises or bequests in last wills or testaments, and doeds or donations inter vivos, and inheritances or successions, are not partners. Story, Partn. _3.

13. Joint owners of ships are not, in consequence of such ownership, to be considered as partners. Abbot on Ship. 68; 3. Kent, Com. 25, 4th ed.; 15 Wend. 187; and see Poth. De Societe, n. 2; 4 Pard. Dr. Com. n. 969; 17 Dur. Dr. Fr. n. 320; 5 Duv. Dr. Civ. Fr. n. 33.

14.− The free and personal choice of the contracting parties is so essentially necessary to the constituting of a partnership, that even executors and representatives of deceased partners do not, in their representative capacity, succeed to the state and condition of partners; 2 Ves. sen. 34; Wats. on Partn. 6; although a community of interest necessarily exists between them and the surviving partners, until the affairs of the partnership are wound up. 11 Ves. 3. When there is a positive agreement at the commencement of the partnership, that the personaI representative or heir of a partner shall succeed him in the partnership, the obligation will be considered valid. Coll. on part. B. 1; ch. 1, _11; Story, Partn. _5.

15. − _5. The object of the partnership must be legal. All partnerships, therefore, which are formed for any purpose forbidden by law or good morals, are null and void. But all the partners in such a partnership are jointly liable to third persons who may contract with them without a knowledge of the illegal or immoral object of the partnership. Civ. Code of Lo. art.− 2775; 5 B. & A. 341 2 B. & P. 371; 3 T. R. 454; Poth. Oblig. by Evaans, vol. 2, page 3; Gow on Partn. 8; Wats. Partn. 131. Partnerships are not confined to mere commercial trade or business; but generally extend to, manufactures and, to all other lawful occupations and employments, or to professional or other business. They may extend to all the business of the parties; to a single branch of such business; to a single

adventure; or to a single thing. But there cannot lawfully be a partnership in a mere, personal office, especially when it is of a public nature, requiring the personal confidence in the skill and integrity of the officer. Story, Partn. _81; Colly. Partn. 31.

16. − _6. Partnerships may be formed to last for life, or for a specific period of time; they may be conditional or indefinite in their duration, or for a single adventure or dealing; this depends altogether on the will of the parties. The period of duration is either expressed or implied, but the law will not presume that it shall last beyond life. 1 Swanst. 521; 1 J. Wils. R., 181. When a particular term is fixed, it is presumed to endure until the period has elapsed; when no term is fixed, it is presumed to endure for the life of the parties, unless previously dissolved, by the acts of one of them, by mutual consent, or by operation of law. Story, Partn. _84. When no time is limited for the duration of a general trading partnership, it is a partnership at will, and may be dissolved at any time at the pleasure of any one or more of the partners.

17. − _7. A partnership may be dissolved in several ways: when the partnership is formed for a single dealing or transaction, it follows that it is at an end so soon as the dealing or transaction in which the partners jointly engaged is completed. Gow on Partn. 268; Inst. Lib. 3, tit., 26, s. 6.

18. Where a general partnership is formed, either for a definite, or an indefinite period of time, the causes which may operate a destruction of it, are various. In the case of a partnership limited as to its duration, it may, in the intermediate time, before the restricted period of its termination arrives, be dissolved either by the death, the confirmed insanity, the bankruptcy of all or one of the partners, or it may endure the stipulated period, and expire with the effluxion of time; but where the partnership is unlimited as to its existence, although in the instances of death or bankruptcy, it is determined, yet if they do not intervene, any partner may withdraw himself from it whenever he thinks proper. Code, lib. 4, t. 37, 1, 5.

19. Besides the causes above stated for a dissolution, a partnership, limited or unlimited as to its duration, may be dissolved by the decree of a court of equity, where the conduct of some or all of the partners has been such as not to carry on the trade or undertaking on the terms stipulated; Gow on Partn. 269; or by the involuntary or compulsory, sale or transfer of the partnership interest of any one of the partners. 17 John. R. 525.

20. In New York, it has been held that there is no such thing as an indissoluble partnership, and that, therefore, any partner may withdraw at any time; and by that act the partnership will be solved; the other party having his action against the withdrawing partner upon his covenant to continue the partnership; 19 Johns. R. 538. This doctrine is not in accordance with the English law. Indeed it is even doubtful in New York. Story, Eq. Jur. _668; Story, Partn. _275; 3 Kent Com. 61, 4th ed.; 1 Hoffm. Ch. R. 534. See Gow on Partn. 803, 305, and 4 Wash. C. C. R. 232.

21. It may also be dissolved by the extinction of the thing or object of the partnership; or by the agreement of the parties. See Civ. Code of Louis. art. 2847 Code Civ. B. 3, fit. 9, c 4 art. 1865 to 1872; 2 Bell’s Com. 631 to 6414, 6th ed. See Dissolution.

22. The effect of the dissolution of the partnership is to disable any one of the partners from contracting new obligations or engagements on account of the firm. 1 Pet., R. 351; 3 McCord, 378; 4 Munf. 215; 2 John., 300; 5 Mason, 56; Harper, R. 470; 4 John. 224; 1 McCord, 338; 6 Cowen, 701. But notwithstanding the dissolution there remain, with each of the partners, certain powers, rights, duties, authorities, and relations between them, which are indispensable to the complete arrangement and final settlement of the affairs of the firm. The partnership must, therefore, subsist for many purposes, notwithstanding the dissolution. Among these are, 1st. The completion of an the unperformed engagements of the partnership. 2d. The conversion of all the property, means and assets of the partnership, existing at the time of the dissolution, for the benefit of those who, were partners, according to their respective shares. 3d. The application of the partnership funds, to, the liquidation of the partnership debts. Story, Partn. _324.

23. − _3. By the laws of Louisiana, partnerships are divided, as to their object, into commercial partnerships and ordinary partnerships Commercial partnerships are such as are formed, 1. For the purchase of any personal property, and the sale thereof, either in the same state or changed by manufacture. 2. For buying and selling any personal property whatsoever, as factors or brokers. 3. For carrying personal property for hire, in ships or other vessels. Civ. Code of Lo. art., 2796.

24. Ordinary partnerships are, such as are not commercial; they are divided into universal or particular partnerships. Id. art. 2797.

25. Universal partnership is a contract by which the parties agree to make a common stock of all the property

they respectively possess; they may extend it to all the property real and personal, or restrict it to personal only; they may, as, in other partnerships, agree that the property itself shall be common stock, or that the fruits only shall be such; but prop erty which may accrue to one of the parties, after entering into the partnership, by donation, succession, or legacy, does not become common stock, and any stipulation to that effect, previous to the obtaining the property aforesaid, is void. Code Civ. of Lo.art. 2800.

26. Particular partnerships are such as are formed for any business not of a commercial nature. Id. art. 2806. The business of this partnership must be conducted in the name of all the persons concerned, unless a firm is adopted by the articles of partnership reduced to writing, and recorded as is prescribed with respect to partnerships in commendam. Id. art 2808.

27. There is also a species of partnership which may be incorporated with either of the other kinds, called partnership in commendam, or limited partnership. Id. art. 799. Partnership in commendam is formed by a contract, by which one person or partnership agrees to furnish another person or partnership a certain amount, either in property or money, to be employed by the person or partnership whom it is furnished, in his or their own name or firm, on condition of receiving a share in the profits, in the proportion determined by the contract, and of being liable to losses and expenses to the amount furnished, and no more. Id. art. 2810.

28. Every species of partnership may receive such partners. It is therefore a modification of which the several kinds of partnerships are susceptible, rather than a separate division of partnerships. Vide Bouv. Inst. Index, h. t.: Firm.

PARTOWNERS. Persons who hold real or personal property by the same title, either as tenants in common, joint tenants, or coparceners. They are sometimes called guasi partners and differ from partners in this, that they are either joint owners, or tenants in common, each having an independent, although an undivided interest in the property; neither can transfer or dispose of the whole property, nor act for the others in relation to it, but merely for his own share, and to the extent of his own several right and interest.

2. In joint tenancy of goods or chattels, it is true, the joint tenants are seized per my et per tout; but still each one has an independent, and to a certain extent a distinct right during his lifetime, which he can dispose of and sever the tenancy.

3. Tenants in common hold undivided portions of the property by several titles, or in several rights, although by one title. Their possession, however, they hold in common and undivided. Whereas, in partnerships, the partners are joint owners of the property, and each has a right to sell or dispose of the whole, unless otherwise provided for in the articles of partnership. Colly. Partn. 86; Wats. Partn. 66; Story, Partn. _91.

4. At common law, each of the owners of a chattel has an equal title and right to possess and use it; and in the case of common cbattels the law has generally left this right to the free discretion of the several owners but in regard to ships, the common law has adopted and followed’ out the doctrine of the courts of admiralty. It authorizes the majority in value and interest to employ the ship upon any probable design. This is done, not without guarding the rights, of the minority. When the majority desire to employ a ship upon any particular voyage or adventure, they have a right to do so, upon giving security by stipulation to the minority, if required, to bring back and restore the ship to them, or in case of her loss, to pay them the value of their shares. Abbott, Shipp. 70; 3 Kent Com. 151, 4th ed.; 2 Bro. Civ. Law, 131; Molloy, B. 2, c. 1, _3; 2 Pet. Adm. R. 288; Story, Partn. 428 11 Pet. R. 175. When the majority do not choose to employ the ship, the minority have the same right, upon giving similar security. 11 Pet. R. 175; 1 Hagg. Adm. R. 306; Jacobi: Sea Laws, 442.

5. When part owners are equally divided as to the employment, upon any particular voyage, the courts of admiralty have man fested a disposition to support the right of the court to order a sale of the ship. Story Partn. _439; Bee’s Adm. R. 2; Gilpin, R. 10; 18 Am. Jur. 486.

PARTURITION. The act of giving birth to a child.

2. Sometimes questions arise how far means may be employed to promote par turition, which cause, or are likely to cause others in relation to it, but merely for his own share, and to the extent of his own several right and interest.

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3. Tenants in common hold undivided portions of the, property by several titles, or in several rights, although by one title. Their possession, bowever, they hold in common and undivided. Whereas, in partnerships, the partners

are joint owners of the property, and each has a right to sell or dispose of the whole, unless otherwise provided for in the articles of partnership. Colly. Partn. 86; Wats. Partn. 66; Story Partn. _91.

4. At common law, etch of the owners of a ebattel has an equal title and right to possess and use it; and in the case of common chattels the law has generally, left this right to the free discretion of the several owners, but in regard to ships, the common law has adopted and followed out the doctrine of the courts of admiralty. It authorizes the majority in value and interest to employ the rehip upon any probable design. This is done, not without guarding the rights, of the minority: When the maiority desire to employ a ship upon any particular voyage or adventure, they have a right to do so, upon giving security by stipulation to the minority, if required, to bring back and restore the rbip to them, or in case of her loss, to pay them the value of their shares. Abbott, Shipp. 70; 3 Kent, Com. 151, 4th ed.; 2 Bro. Civ. Law, 131; Molloy, B. 2, c. 1, _3; 2 Pet. Adm. R. 288, Story, Partn. 428; 11 Pet. R. 175. When the majority do not choose to employ the ship, the minority have, the same right, upon 'vi" similar security. 11 Pet. R. 175; I @agg! Adm. R. 306; Jacobi. Sea Laws, 442.

6. When part owners are equally divided as to the employment, upon any particular voyage, the courts of admiralty, have manifested a disposition to support the right of the court to order a sale of the ship. Story, Partn. _439; Bee's Adm. R. 12 i Gilpili, R. 10; 18 Am. Jur. 486.

PARTURITION. Tho act of giving birth to a child

2. Sometimes questions arise bow far means may be employed to promote par−turition, which cause, or are likely to cause, the death of the foetus. These means, in cases of deformed pelvis, are abortion in the early months, by embryotomy, by symphysotomy, and by the Caesarian section. These means are justifiable to save the life of the mother, and sometimes some of them have saved the lives of both. Vide Caesarian operation; Delivery; Pregnancy.

PARTUS. The child just before it is born, or immediately after its birth. Before birth the partus is considered as a portion of the mother. Dig. 25, 4, 1, 1. −See Birth; Foetus; Proles; Prolicide.

PARTY, practice, contracts. When applied to practice, by party is understood either the plaintiff or defendant. In contracts, a party is one or more persons who engage to perform or receive the performance of some agreement. Vide Parties to contrads; Parties to 'actions; Parties to a suit in equity.

PARTY−JURY. An ancient word used to signify a jury de medietas linguae, (q. v.) or one composed one−half of natives, and the other of foreigners. Lexic. Techn. h. t.

PARTY WALL. A wall erected on the line between two adjoining estates, belonging to different persons, for the use of both estates. 2 Bouv. Inst. n. 1615.

2. Party walls are generally regulated by acts of the local legislatures. The principles of these acts generally are, that the wall shall be built equally on the lands of the adjoining owners, at their joint expense, but when only one owner wishes to use such wall, it is built at his expense, and when the other wishes to make use of it, he pays one half of its value; each owner has a right to place his joists in it, and use it for the support of his roof. When the party wall has been built, and the adjoining owner is desirous of having a deeper foundation, he has a right to undermine such wall, using due care and diligence to prevent any injury to his neighbor, and having done so, he is not answerable for any consequential damages which may ensue. 17 Jobn. R. 92; 12 Mass. 220; 2 N. H. Rep. 534. Vide 1 Dall. 346; 5 S . & R. 1.

3. When such wall exists between two buildings, belonging to different persons, and one of them takes it down with his buildings, he is required to erect another in its place in a reasonable time, and with the least inconvenience; the other owner must contribute to the expense, if the wall required repairs, but such expense will be limited to the costs of the old wall. 3 Kent, Com. 436. When the wall is taken down, it must be done with care; but it is not the duty of the person taking it down to shore up or prop the.,house of his neighbor, to prevent it from falling; if, however, the work be done with negligence, by which injury accrues to the neighboring house, an action will lie. 1 Moody & M. 362. Vide 4 C. & P. 161; 9 B. & C. 725; 12 Mass. R. 220; 4 Paige's R. 169; 1 C. & J. 20; 1 Pick. 434; 12 Mass. 220; 2 Roll., Ab. 564; 3 B. & Ad. 874; 2 Ad. &−Ell. 493 Crabb on R. P. _500. In the excellent treatise of M. Lepage, entitled "Lois des Batimens," part 1, c. 3, s. 2, art. l, will be found a very minute examination of the subject of party walls, with many cases well calculated to illustrate our law. See also Poth. Contr. de Societe, prem. app. n. 207; 2 Hill.: Ab. 119; Toull. liv. 2, t. 2, c. 3.

PASS. In the slave states this word signifies a certificate given by the master or mistress to a slave, in which it is stated that he is permitted to leave his home, with the authority of his master or mistress. The paper on which−such certificate is written is also called a pass.

PASS, practice. To be given, or entered; to proceed; as, let the judgment pass for the plaintiff.

TO PASS. To accomplish, to complete, to decide.

2. The title to goods passes by the sale whenever the parties have agreed upon the sale and the price, and nothing remains to be done to complete the agreement. 1 Bouv. Inst. n. 939.

3. When a jury decide upon the rights of the parties, which are in issue, they are said to pass upon them.

PASS BOOK, com. law. A book used by merchants with their customers, in which an entry of goods sold and delivered to a customer is made.

2. It is kept by the buyer, and sent to the merchant whenever he wishes to purchase any. article. It ought to be a counterpart of the mercbant's books, as far as regards the customer's account.

3. Among English bankers, the term pass−book is given to a small book made up from time to time, from the banker's ledger, and forwarded to the customer; this is not considered as a statement of account between the parties, yet when the customer neglects for a long time to make any objection to the correctness of the entries he will be bound by them. 2 Atk. 252; 2 Deac. & Ch. 534; 2 M. & W. 2.

PASSAGE. A way over water; a voyage made over the sea or great river; as, the Sea Gull had a quick passage: the money paid for the transportation of a person over the sea; as, my, passage to Europe was one hundred and fifty dollars.

PASSAGE MONEY, contracts. The sum claimable for the conveyance of a person with or without luggage on the water.

2. The difference between freight and passage money is this, that the former is claimable for the carriage of goods, and the latter for the carriage of the person. The same rules which govern the claim for freight affect that for passage money. 3 Chit. Com. Law, 424; 1 Pet. Adm. Dec. 126; 3 John. 335.

PASSIVE, com. law. All the sums of which one is a debtor. It is used in contradistinction to active. (q. v.) By active debts are understood those which may be employed in furnishing assets to a merchant to pay those which he owes, which are called passive debts.

PASSPORT, SEA BRIEF, or SEA LETTER, maritime law. A paper containing a permission from the neutral state to the captain or master of a ship or vessel to proceed on the voyage proposed; it usually contains his name and residence; the name, property, description, tonnage and destination of the ship; the nature and quantity of the cargo; the place from whence it comes, and its destination; with such other matters as the practice of the place requires.

2. − This document is indispensably necessary in time of war for the safety of every neutral vessel. Marsh. Ins. B. 1, c. 9, s. 6, p. 406, b.

3. In most countries of continental Europe passports are given to travellers; these are intended to protect them on their journey from all molestation, while they are obedient to the laws. Passports are also granted by the secretary of state to persons travelling abroad, certifying that they are citizens of the United States. 9 Pet. 692. Vide 1 Kent, Com. 162, 182; Merl. Repert. h. t.

PASSENGER, cont. One who has taken a place. in a public conveyance, for the purpose of being transported from one place to another.

2. By act of Feb. 22, 1847, Minot's Statutes at Large of United States, p. 127, it is provided as follows: That if the master of any vessel owned in whole or in part by a citizen of the United States of America, or by a citizen of any foreign country, shall take on board, such vessel, at any foreign port or place, a greater number of passengers than in the following proportion, to the space occupied by them and appropriated for their use, and unoccupied by stores, or other goods, not being the personal luggage of such passengers, that is to say, on the lower deck or platform one passenger for every fourteen clear superficial feet of deck, if such vessel is not to pass within the tropics during such voyage; but if such vessel is to pass within the tropics during such voyage, then one passenger, for every twenty such clear superficial feet of deck, and on the orlop deck (if any) one passenger for every thirty such superficial feet in all cases, with intent to bring such passengers to the United States of America, and shall leave such port or place with the same or any other number thereof, within the jurisdiction of the United States aforesaid, or if any such master of vessel shall take on board of his vessel, at any port or place within the jurisdiction of the United States aforesaid, any greater number of passengers than the proportions aforesaid admit, with intent to carry the same to any foreign port or place, every such master shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any circuit or district court of the United States aforesaid, shall, for each passenger taken on board beyond the above proportions, be fined in the sum of fifty dollars, and may also

be imprisoned for any term not exceeding one year: Provided, That this act shall not be construed to permit any ship or vessel to carry more than two passengers to five tons of such ship or vessel.

3. − _2. That if the passengers so taken on board of such vessel, and brought into or transported from the United States aforesaid, shall exceed the number limited by the last section to the number of twenty in the whole, such vessel shall be forfeited to the United States aforesaid, and be prosecuted and distributed as forfeitures are under the act to regulate duties on imports and tonnage.

4. − _3. That if any such vessel as aforesaid shall have more than two tiers of berths, or in case, in such vessel, the interval between the floor and the deck or platform beneath shall not be at least six inches, and the berths well constructed, or in case the dimensions of such berths shall not be at least six feet in length, and at least eighteen inches in width, for each passenger as aforesaid, then the master of said vessel, and the owners thereof, severally, shall forfeit and pay the sum of five dollars for each and every passenger on board of said vessel on such voyage, to be recovered by the United States aforesaid, in any circuit or district court of the. United States where such vessel may arrive, or from which she sails.

5. − _4. That, for the purposes of this act, it shall in all cases be computed that two children, each being under the age of eight years, shall be equal to one passenger, and that children under the age of one year shall not be included in the computation of the number of passengers.

6. − _5. That the amount of the several penalties imposed by this act shall be liens on the vessel or vessels violating its provisions; and such vessel may be libelled and sold therefor in the district court of the United States aforesaid in which such vessel shall arrive.

9. By act of March 2, 1847, Minot's Statutes at Large of United States, p. 149, it is enacted, That so much of said act as authorizes shippers to estimate two children of eight years of age and under as one passenger, in the assignment of room, is hereby repealed.

10. The act of May 17, 1848, Minot's Statute at Large of United States, p. 220, further provides, That all vessels, whether of the United States or any other country, having sufficient capacity according to law for fifty or more passengers, (other than cabin passengers,) shall, when employed in transporting such passengers between the United States and Europe, have on the upper deck, for the use of such passengers, a house over the passage−way leading to the apartment allotted to such passengers below deck, firmly secured to the deck, or combings, of the hatch, with two doors, the sills of which shall be at least one foot above the deck, so constructed that one door or window in such house may, at all times, be left open for ventilation; and all vessels so employed, and having the capacity to carry one hundred and fifty such passengers, or more, shall have two such houses; and the stairs or ladder leading down to the aforesaid apartment shall be furnished with a handrail of wood or strong rope: Provided, nevertheless, Booby hatches may, be substituted for such houses in vessels having three permanent decks.

11. − _2. That every such vessel so employed, and having the legal capacity for more than one hundred such passengers, shall have at least two ventilators to purify the apartment or apartments occupied by such passengers; one of which shall be inserted in the after part of the apartment or apartments, and the other shall be placed in the forward portion of the apartment or apartments, and one of them shall have an exhausting cap to carry off the foul air, and the other a receiving cap to carry down the fresh air which said ventilators shall have a capacity proportioned to the size of the apartment or apartments to be purified; namely, if the apartment or apartments will lawfully authorize the reception of two hundred such passengers, the capacity of such ventilators shall each of them be equal to a tube of twelve inches diameter in the clear, and in proportion for larger or smaller apartments; and all said ventilators shall rise at least four feet six inches above the upper deck of any such vessel, and be of the most approved form and construction: Provided, That if it shall appear from the report to be made and approved., as provided in the seventh section of this act that such vessel is equally well ventilated by any other means, such other means of ventilation shall be deemed, and held to be, a compliance with the provisions of this section.

12. − _3. That every vessel carrying more than fifty such passengers shall have for their use on deck, housed and conveniently arranged, at least one camboose or cooking range, the dimensions of which shall be equal to four feet long and one foot six inches wide for every two hundred passengers; and provisions shall be made, in the manner aforesaid in this ratio for a greater or less number of passengers: Provided, however, Ana nothing herein contained shall take away the right to make such arrangements for cooking between decks, if that shall be deemed desirable.

13. − _4. That all vessels employed as aforesaid shall have on board, for the use of such passengers, at the time

of leaving the last port whence such vessel shall sail, well secured under deck, for each passenger, at least fifteen pounds of good navy bread, ten pounds of rice, ten pounds of oatmeal, ten pounds of wheat flour, ten pounds of peas and beans, thirty−five pounds of potatoes, one pint of vinegar, sixty gallons of fresh water, ten pounds of salted pork, free of bone, all to be of good quality, and a sufficient supply of fuel for cooking; but at places where either rice, oatmeal, wheat flour or peas and beans cannot be procured, of good quality and on reasonable terms, the quantity of either or any of the other last−named articles may be increased and substituted therefor; and in case potatoes cannot be procured on reasonable terms, one pound of either of said articles maybe substituted in lieu of five pounds of potatoes; and the captains of such vessels, shall deliver to each passenger at least one−tenth part, of the aforesaid provisions weekly, commencing on the day of sailing, and daily at least three quarts of water, and sufficient fuel for cooking; and if the passengers on board of any such vessel in which the provisions, fuel and water herein required shall not have been provided as aforesaid, shall at any time be put on short allowance during, any voyage, the master or owner of any such vessel shall pay to each and every passenger who shall have been put on short allowance the sum of three dollars for each and every day they may have been on such short allowance, to be recovered in the eircuit or district court of the United States; Provided, nevertheless, and nothing herein contained shall prevent any passenger, with the consent of the captain, from furnishing for himself the articles of food herein specified; and, if, put on board in good order, it shall fully satisfy the provisions of this act so far as regards food, and provided further, That any passenger may also, with the consent of the captain, furnish for himself an equivalent for the articles of food required in other and different articles: and if, without waste or neglect on the part of the passenger, or inevitable accident, they prove insufficient, and the captain shall furnish comfortable food to such passengers during the residue of the voyage, this, in regard to food, shall also be a compliance with the terms of this act.

14. − _5. That the captain of any such vessel so employed is hereby authorized to maintain good discipline, and such habits of cleanliness among such passengers, as will tend to the preservation and promotion of health,; and to that end, he shall cause such regulations as he may adopt for this purpose to be posted up, before sailing, on board such vessel, in a place accessible to such passengers, and stall keep the same so posted up during the voyage; and it is hereby made the duty of said captain to cause the apartment occupied by such passengers to be kept, at all times, in a clean healthy state, and the owners of every such vessel so employed are required to construct the decks, and all parts of said apartment, so that it can be thoroughly cleansed; and they shall also provide a safe, convenient privy or water closet for the exclusive use of every one hundred such passengers. And when the weather is such that said passengers cannot be mustered on deck with their bedding, it shall be the duty of the captain of every such vessel to cause the deck occupied by such passengers to be cleaned [cleansed] with chloride of lime, or some other equally efficient disinfecting agent, and also at such other times as said captain may deem necessary.

15. − _6 That the master and owner or owners of any such vessel so employed, which shall not be provided with the house or houses over the passage−ways, as prescribed in the first section of this act; or with ventilators, as proscribed in the second section of this act; or with the cambooses or cooking ranges, with the houses over them, as prescribed in the third section of this act; shall severally forfeit and pay to the United States the sum of two hundred dollars for each and every violation of, or neglect to conform to, the provisions of each of said sections; and fifty dollars for each and every neglect or violation of any of the provisions of the fifth section of this act; to be recovered by suit in any circuit or district court of the United States, within the jurisdiction of which the said vessel may arrive, or from. which it may be about to depart, or at any place within the jurisdiction of such courts, wherever the owner or owners, or captain of such vessel, may be found.

16. − _7. That the collector of the customs, at any port in the United States at which any vessel so employed shall arrive, or from which any such vessel shall be about to depart, shall appoint and direct one of the inspectors of the customs for such port to examine such vessel, and report in writing to such collector whether the provisions of the first, second, third and fifth sections of this act have been complied with in respect to such vessel; and if such report shall state such compliance, and be approved by such collector, it shall be deemed and held as conclusive evidence thereof.

17. − _8. That the first section of the act entitled, "An act to regulate the carrying of passengers in merchant vessels," approved February twenty−second, eighteen hundred and forty−seven, be so amended that, when the height or distance between the decks of the vessels referred to in the said section shall be less than six feet, and not less than five feet, there shall be allowed to each passenger sixteen clear superficial feet on the deck, instead

of fourteen, as prescribed in said section; and if the height or distance between the decks shall be less than five feet, there shall be allowed to each passenger twenty−two clear superficial feet on the deck; and if the master of any such vessel shall take on board his vessel, in any port of the United States, a greater number of passengers than is allowed by this section, with the intent specified in said first section of the act of eighteen hundred and forty−seven, or if the master of any such vessel shall take on board at a foreign port, and bring within the jurisdiction of the United, States, a greater numher of passengers than is allowed by this section, said master shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished in the manner provided for the punishment of persons convicted of a violation of the act aforesaid; and in computing the number of passengers on board such vessels, all children under the age of one year, at the time of embarkation, shall be excluded from such computation.

18. − _9. That this act shall take effect, in respect to such vessels sailing from ports in the United States, in thirty days from the time of its approval; and in respect to every such vessel sailing from ports in Europe, in sixty days after such approval; and it is hereby made the duty of the secretary of state to give notice, in the ports of Europe, of this act, in such manner as he may deem proper.

19. − _10. That so much of the first section of the act entitled " An act regulating passenger ships and vessels," approved March second, eighteen hundred and nineteen, or any other act that limits the number of passengers. to two for every five tons, is hereby repealed.

20. By act of March 3, 1849, Minot’s Statutes at Large of United States, p. 399, it is enacted, That all vessels bound from any port in the United States to any port or place in the Pacific Ocean, or on its tributaries, or from any such port or place to any port in the, United States on the Atlantic, or its tributaries, shall be subject to the provisions of all the laws now in force relating to the carriage of passengers in merchant vessels, sailing to and from foreign countries, and the regulation thereof; except the fourth section of the "Act to provide for the ventilation of passenger vessels, and for other purpoes," approved May seventeenth, eighteen hundred and forty−eight, relating to provisions, water, and fuel; but the owners and masters of all such vessels shall in all cases furnish to each passenger the daily supply of water therein mentioned, and they shall furnish for themselves, a sufficient supply of, good and wholesome food; and in case they shall fail so to do, or shall provide unwholesome or unsuitable provisions, they shall be subject to the penalty provided in said fourth section in case the passengers are put on short allowance of water or provisions.

21. − _2. That the act, entitled "An act to regulate the carriage of passengers in merchant vessels," approved February twenty−second, eighteen hundred and forty−seven, shall be so amended as that a vessel passing into or through the tropics shall be allowed to carry the same number of passengers as vessels that do not enter the tropics,

22. By act of January 31, 1848, Minot’s Statutes at Large of United States, p. 210, it is enacted, That, from and after the passage of this act, all and every vessel and vessels which shall or may be employed by the American Colonization Society, or by the Maryland State Colonization Society, to transport, and which shall actually transport, from any port or ports in the United States to any colony or colonies on the west coast of Africa, colored emigrants to reside there, shall be, and the same are hereby, excepted out of and exempted from the operation of the act entitled " An act to regulate the carriage of passengers in merchant vessels," passed twenty−second February, eighteen hundred and forty−seven; and of the act. entitled " An act to amend an act entitled ’An act to regulate the carriage of passengers in merchant vessels, and to determine the time,’ when said act shall take effect,"’ passed, second March, eighteen hundred and forty−seven.

23. No deduction is to be made, in estimating, the number of passengers in a vessel, for children or persons not paying. Gilp. R. 334. For his rights and duties, vide Common Carriers.

PASTURES, pastures. The land on which beasts are fed; and by a grant of pastures the land itself passes. 1 Thorn. Co, Litt. 202.

PATENT, constrction. That which is open or manifest.

2. This word is usually applied to ambiguities which are said to be latent, or patent.

3. A patent ambiguity −is one which is produced by the uncertainty, contradictoriness or deficiency of the language of an instrument, so that no discovery of facts or proof of declaration can restore the doubtful or smothered sense without adding ideas which the actual words will not of themselves sustain. Bac. Max. 99 T. Raym. R. 411; Roberts on Fr. 15.

4. A latent ambiguity may be explained by parol evidence, but the rule is, different with regard to a patent

abiguity, which cannot be explained by parol proof. The following instance has been proposed by the court as a patent ambiguity: " If A B, by deed, give goods to one of the sons of J S, who has several sons, he shall not aver which was intended; for by judgment of law upon this deed, the gift is void for uncertainty, which cannot be supplied by averment." 8 Co. 155 a. And no difference exists between a deed and a will upon this subject. 2 Atk. 239.

5. This rule, which allows an explanation of latent ambiguities, and which forbids the use of parol evidence to explain a patent ambiguity, is difficult of application. It is attended, in some instances, with very minute nicety of discrimination, and becomes a little unsteady in its application. When a bequest is made " to Jones, son of, Jones," or " to Mrs. B," it is not easy to show that the ambiguity which this imperfect designation creates, is not ambiguity arising upon the face of the will, and as such, an ambiguity patent, yet parol evidence is admitted to ascertain the persons intended by those ambiguous terms.

6. The principle upon which parol testimony is admitted in these cases, is probably, in the first of them, a presumption of possible ignorance in the testator of the christian name of the legatee; and in the second, a similar presumption of his being in the habit of calling the person by the name of Mrs. B. Presumptions, which being raised upon the face of the will, may be confirmed and explained by extrinsic evidence. Rob’ on. Fr. 15, 27; 2 Vern.

624, 5; 1 Vern. by Raithby, 31, note 2; 1 Rop. Leg. 147; 3 Stark. Ev. 1000; 3 Bro. C. C. 311 2 Atk. 239; 3 Atk. 257; 3 Ves. Jr. 547. Vide articles Ambiguity; Latent.

PATENT, contracts. A patent for an invention is a giant made by the government of the United States to the inventor of any new or useful art, machine, manufacture or composition of matter, or any new and useful improvement in any art, machine, manufacture or composition of matter not known or used by others before his or their discovery or invention thereof, and not, at the time of his application for a patent, in public use or on sale, with his consent or allowance, as the inventor or discoverer; securing to him for a limited time, therein expressed, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention or discovery, on certain conditions, among which is the one of at once giving up his secret and making public his discovery or invention, and the manner of making and using the same, so that at the expiration of his privilege, it may become public property. The instrument securing this grant is also called a patent. The subject will be considered by taking a succint view of, 1. The legislation of the United States on the subject. 2. The patentee. 3. The subject to be patented. 4. The caveat and preliminary proceedings. 5. The proceedings to obtain a patent. 6. The patent. 7. The duty or tax on patents. 8. Courts having jurisdiction in patent cases. 9. Actions for violations of patents. _1. Legislation of the United States. 2. The constitution of the United States authorizes congress to pass laws " to, promote the progress of science and the useful arts, by securing, for limited times, to authors and inventors, the exclusive right of their respective writings and discoveries." Art. 1, s. 8, n. 8. By virtue of this authority congress can grant patents to inventors, and it rests in the sound, discretion of the legislature to say when, and for what length of time, and under what circumstances the patent for an invention shall be granted. Congress may, therefore, grant a patent which shall operate retrospectively by securing to the inventor the use of his invention, though it was in public use and enjoyed by the community at the time this act was passed . 3 Sumn. 535; 2 Story, R. 164. The first act passed under this power is that which established the patent office on the 10th of April, 1790, 1 Story, L. U. S. 80. There were several supplements and modifications to this first law, namely, the acts passed February 7, 1793, Idem, 300; June 7, 1794, Idem, 363; April 17, 1800, Idem, 753; July 3,1832, 4 Sharsw. cont. of Story, L. U.S. 2300; July 13, 1832, Idem, 2313.

3. These acts were repealed by the act of July 4, 1836, 4 Sharsw. cont. Story, L. U. S. 2504, which. enacts:

_21. That all acts and parts of acts theretofore passed on this subject be, and the same are hereby repealed: Provided, however, That all actions and processes, in law or equity sued out prior to the passage of this act, may be prosecuted to final judgment and execution, in the same manner as though this act had not been passed, excepting and saving the application to any such action, of the provisions of the fourteenth and fifteenth sections of this act, so far as they maybe applicable thereto. And provided, also, That all applications and petitions for patents, pending at the time of the passage of this act, in cases where the duty has been paid, shall be proceeded with and acted on in the same manner as though filed after the passage thereof.

4. The existing laws on the subject of patents are the act of July 4, 1836, already mentioned; the acts of March 3, 1837; Idem, 2546; March 3, 1839; 9 Laws U. S, 1019; August29,1842; ch. 263, Pamph. Laws, 171; May 27, 1848. Minot’s Stat. at Large, U. S. 231. _2. Of the patentee.

5. Any person or persons having discovered or invented the thing to be pa−tented, whether he be a citizen of the United States or an alien, is entitled to a patent on fulfilling the requirements of the law. Act of July 4, 1836, s. 6.

6. By the 10th section of the same act it is provided, That where any person hath made, or shall have made, any new invention, discovery or improvement, on account of which a patent might by virtue of this act be granted, and, such person shall die before any patent shall be granted therefor, the right of applying for and obtaining such patent shall devolve on the executor or administrator of such person, in trust for the heirs at, law of the deceased, in case he shall have died intestate; but if otherwise, then in trust for his devisees, in as full and ample manner, and under the same conditions, limitations, and restrictions, as the same was held, or might have been claimed or enjoyed by such in his or her lifetime; and when application for a patent shall be made by such legal representatives, the oath or affirmation provided in the sixth section of this act, shall be so varied as to be applicable to them.

7. And by the act of March 3, 1837, section 6, it is enacted, That any patent hereafter to be issued, may be made and issued to the assignee or assignees of the inventor or discoverer, the assignment thereof being first entered of record, and the application therefor being duly made, and the specifications duly sworn to by the inventor. And in all cases, hereafter, the applicant for a patent shall be held to furnish duplicate drawings, Whenever the case admits of drawings, one of which to be deposited in the office, and the other to be annexed to the patent, and

considered a part of the specification.

_3. The subject to be patented

8. Patents are granted, 1. For inventions and discoveries. 2. For importations. 1. Patents for inventions and discoveries. By the act, of July 4, 1836, sect. 6, it is enacted, that any person or persons having discovered or invented any new and useful art, machine,, manufacture, or composition of matter, or any new and useful improvement on any art, machine, manufacture, or composition of matter, not known or used by others before his or their discovery or invention thereof, and not, at the time of his application for a patent, in public use or on sale, with his consent or allowance, as the inventor or discoverer, and shall desire to obtain an exclusive property therein, may make application in writing to the commissioner of patents, expressing such desire, and the commissioner on due proceedings had, may grant a patent therefor.

9. The thing to be patented must be an invention Or discovery; it must be new and useful.

10. − 1. The invention or discovery must be something which the inventor has himself found out; some peculiar device or manner of producing any given effect. A patent cannot, therefore, be taken out for the elementary principles of motion, which philosophy and science have discovered, but only for the manner of applying them. 1 Gallis. 478; 2 Gallis. 51.

11. A patent may be taken out for an improvement on a machine which is known and used; 3 Wheat. 454; but a mere change of former proportions, will not entitle a party to a patent. 1 Gallis. 438; 2 Gallis. 51.

12. It is provided by the act of July 4, 1836, s. 13, that whenever the original patentee shall be desirous of adding the description and specification of any new improvement of the original invention or discovery which shall have been invented or discovered by him subsequent to the date of his patent, he may, like proceedings being had in all respects as in the case of original applications, and on the payment of fifteen dollars, as hereinbefore provided, have the same annexed to the original description and specification; and the commissioner shall certify, on the margin of such annexed description and specification, the time of its being annexed and recorded; and the same shall thereafter have the same effect in law, to all intents and purposes as though it had been embraced in the original description and specification.

13. And by the act of March 3, 1837, s. 8, that, whenever application shall be made to the commissioner for any addition of a newly discovered improvement to be made on an existing patent, or when ever a patent shall be returned for correction, and re−issue, the specification of claim annexed to every such patent shall be subject to revision and restriction, in the same manner as are original applications for patents; the commissioner, shall not add any such improvement to the patent in the one case, nor grant the re−issue in the other case, until the applicant shall have entered a disclaimer, or altered his specification of claim in accordance with the decision of the commissioner; and in all such cases the applicant, if dissatisfied with such decision, shall have the same remedy and be entitled to the benefit of the same privileges and proceedings as are provided by law in the case of original applications for patents.

14. − 2. The thing patented must be a new and useful invention, discovery or improvement.

15. Among inventors, he who is first in time, has a right to the patent for the invention. Pet. C. C. R. 394.

16. But by the act of March 3, 1839, sect. 7, it is provided, that every person or corporation who has, or shill have, purchased or constructed any newly invented machine, manufacture, or composition of matter, prior to the application by the inventor or discoverer for a patent, shall be held to possess the right to use, and vend to others to be used, the specific machine, manufacture, or composition of matter so made or purchased, without liability therefor to the inventor, or any other person interested in such invention; ana no patent shall be held to be invalid by reason of such purchase, sale, or use, prior to the application for a patent as aforesaid, except on proof of abandonment of such invention to the public; or that such purchase, sale, or prior use has been for more than two years prior to such application for a patent.

17. By the term useful invention is meant an invention which may be applied to some beneficial use in society, in contradistinction to an invention which is injurious to morals, to the health, or good order of society. 1 Mason, C. C. R. 302; 4 Wash. C. C; R. 9. The term is also opposed to that which is frivolous or mischievous. 1 Mason, C. C. R. 182; Renouard, 177; Perpigna, Man. des Inv. c. 2, s. 1, page 50. See 3 Car. & P. 502; 1 Pet. C. C. R. 480; 1 U. S. Law Journ. 563; 1 Paine, 203; 2 Kent, Com. 368, Dr; Phill. on Pat. c. 7, s. 14.

18. The act of August 29, 1842, sect, 3, provides that any citizen or citizens, or alien or aliens, having resided, one year in the United States, and taken the oath of his or their intention to become a citizen or citizens, who by his, her, or their own industry, genius, efforts, and expense, may have invented or produced any new and original

design for a manufacture, whether of metal, or other material or materials, or any new and original design for the printing of woolen, silk, cotton, or other fabrics, or any new and original design for a bust, statue, or has relief or composition in alto or basso relievo, or any new and original impression or ornament, or to be placed on any article of manufacture, the same being formed in marble or other material, or any new and useful pattern, or print, or picture, to be either worked−into or worked on, or printed, or painted, or cast, or otherwise fixed on, any article of manufacture, or any new and original shape or configuration of ally article of manufacture not known or used by others before his, her, or their invention or production thereof, and prior to the time of his, her, or their application for a patent therefor, and who shall desire or obtain an exclusive Property or right therein to make, use, and sell and vend. the same, or copies of the same, to others, by them, made, used, and sold, may make application in writing to the commissioner of patents, expressing such desire, and the commissioner, on due proceedings had, may grant a patent therefor, as in the case. now of application for a patent: Provided, That the fee in such cases which by the now existing laws would be required of the particular applicant shall be one−half the sum, and that the duration of said patent shall be seven years, and that all the regulations and provisions which now apply to the obtaining or protection of patents not inconsistent with the provision's of this act, shall apply to applications under this section.

2. Patents−for importations.

19. It is enacted by the act of March 3, 1839, s. 6, that no person shall be debarred from receiving a patent for any invention or discovery, as provided in the act approved on the fourth day of July, one thousand eight hundred and thirty−six, to which this is additional, by reason of the same having been patented in, a foreign country, more than six months prior to his application: Provided, That the same shall not have been introduced into public and common use, in the United States, prior to the application for such patent: And provided, also, That in all cages every such patent shall be limited to the term of fourteen years from the date or publication of such foreign letters−patent.

20. And by the act of July 4, 1836, s. 8, it is provided, that nothing in this act contained shall be, construed to deprive an origisal and true inventor of the right to a patent for his invention, by reason of his having previously taken out letters−patent therefor in a foreign country, and the same having been published at any time within six mouths next preceding the filing of his specification and drawing.

4. Of the caveat and other preliminary, proceedings.

21. The act of July 4, 1836, s. 12, provides that any citizen of the United States, or alien who have been resident in the United States one year next preceding, and shall have made oath of his intention to become a citizen thereof, who shall have invented any new art, machine, or improvement thereof, and shall desire further time to mature the same, may, on paying to the credit of the treasury, in manner as provided in the ninth section of this act, the sum of twenty dollars, file in the patent office a caveat, setting forth the design and purpose thereof, and its principal and distinguishing characteristics, and praying protection of his right, till he shall have matured his invention − which sum of twenty dollars, in case the person filing such caveat shall afterwards take out a patent for the invention therein mentioned, shall be considered a part of the sum herein required for the same. And such caveat shall be filed in the confidential archives of the office, and preserved in secrecy. And if application shall be made by any other person within one year from the time of filing such caveat, for a patent of any invention with which it may in any respect interfere, it shall be the duty of the commissioner to deposit the description, specifications, drawings, and model, in the confidential archives of the office, and to give notice, by mail, to the person filing the caveat, of such application, who shall, within three months after receiving the notice, if he would avail himself of the benfit of his caveat, file his description, specifications, drawings, and model: and if, in the opinion of the commissioner, the specifications of claim interfere with each other, like proceeding& may be had in all respects as are in this act provided in the case of interfering applications: Provided, however, That no opinion or decision of any board of examiners, under the provisions of this act, shall preclude any person interested in favor of or against the validity of any patent which has been or may hereafter be granted, from the right to contest the same in any judicial court in any action in which its, validity may come in question.

22. And the same act, s. 8, directs, that whenever, the applicant shall request it, the patent shall take date from the time of the filing of the specification and drawings, not however, exceeding six mouths prior to the actual issuing of the patent; and on like request, and the payment of the duty herein required, by any applicant, his

specification and drawings shall be filed in the secret archives of the office, until he shall furnish the model and the patent be issued, not exceeding the term of one year, the applicant being entitled to notice of interfering application.

_5. Of the proceedings to obtain a patent.

23 . This section will be divided by considering the proceedings when there is no opposition, and when there are conflicting claims.

1. Proceedings without opposition

24. The sixth section of the act of July 4, 1836, directs, that before any inventor shall receive a patent for any such new invention or discovery, he shall deliver a written description of his invention or discovery, and of the manner and process of making, constructing, using, and compounding the same, in such full, clear, and exact terms, avoiding unnecessary prolixity, as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; and in case of any machine, he shall fully explain the principle and the several modes in which he has contemplated the application of that principle or character by which it may be distiguished from other inventions and shall particularly specify and point out the part, improvement, or combination, which he claims as his own invention or discovery. He shall, furthermore, accompany the whole with a drawing, or drawings, and written references, where the nature of the case admits of drawings, or with specimens of ingredients, and of the composition of matter, sufficient in quantity for the purpose of experiment, where the invention or discovery is of a composition of matter; which descriptions and drawings, signed by the inventor and attested by two witnesses; shall be filed in the patent office; and be shall, moreover, furnish a model of his invention, in all cases which admit of a representation by model, of a convenient size to exhibit advantageously its several parts. The applicant shall also make oath or affirmation that he does verily believe that he is the original and first inventor or discoverer of the art, machine, composition, or improvement, for which he solicits a patent, and that he does not know or believe that the same was ever known or used; and also of what country he is a citizen; which oath or affirmation may, be made before any person authorized by law to administer oaths.

25. The fourth section of the act of August 29, 1842, provides that the oath required for applicants for patents, may be taken, when the applicant is not, for the time being, residing in the United States, before any minister pleni−potentiary, charge d affaires; consul, or commercial agent, holding a commission under the government of the United States, or before any notary public of the country in which such applicant may be.

26. And the act of March 3, 1837, sect. 13, provides that in all cases in which an oath is required by this act, or by the act to which this is additional, if the person of whom it is required shall be conscientiously scru−pulous of taking an oath, affirmation may be substituted therefor.

27. The seventh section of the act of July 4, 1836, further enacts, that on the filing of any such application, description, and specification, and the payment of the duty hereinafter provided, the commissioner shall make or cause to be made, an examination of the alleged new invention or discovery; and if, on any such examination, it shall not appear to the commissioner that the same had been invented or discovered by any other person in this country prior to the alleged invention or discovery thereof by the applicant, or that it had been patented or described in any printed publication in this or any foreign country, or had been in public use or on sale with the applicant’s consent or allowance prior to the application, if the commissioner shall deem it to be sufficiently useful and important, it shall be his duty to issue a patent therefor. But whenever on such examination it shall appear to the commissioner that the applicant wag not the original and first inventor or discoverer thereof, or that any part of that which is claimed as new had before been invented or discovered, or patented, or described in any printed, publication in this or any foreign country, as aforesaid, or that the description is defective and insufficient, he shall notify the applicant thereof, giving him, briefly, such information and, references as may be useful in judging of the propriety of renewing his application, or of altering his specification to embrace only that part of the invention or discovery which is new. In every such case, if the applicant shall elect to withdraw his application, relinquishing his claim to the model, he shall be entitled to receive back twenty dollars part of the duty required by this act, on filing a notice in writing of such election in the patent office, a copy of which, certified by the commissioner, shall be a sufficient warrant to the treasurer for paying back to said applicant the said sum of twenty dollars. But if the said applicant in such case shall persist in his claim for a patent, with or

without any alteration of his specification, he shall be required to make oath or affirmation anew in manner as aforesaid. And if the specification and claim shall not have been so modified as in the opinion of the commissioner, shall entitle the applicant to a patent, he may, on appeal, and upon request in writing, have the decision of the board of examiners, to be composed of three disinterested persons, who shall be appointed for that purpose by the secretary of state, one of whom at least, to be selected, if practicable and convenient, for his knowledge and skill in the particular art, manufacture, or branch of science to which the alleged invention appertains; who shall be under oath or affirmation for the faithful and impartial performance of the duty imposed upon them by said appointment. Said board shall be furnished with a certificate in writing, of the opinion and decision of the commissioner, stating the particular grounds of his objection, and the part or parts of the invention which he considers as not entitled to be patented. And the same board shall give reasonable notice to the applicant, as well as to the commissioner of the time and place of their meeting; that they may have an opportunity of furnishing them with such facts and evidence as they may deem necessary to. a just decision; and it shall be the duty of the commissioner to furnish to the board of examiners such information as he may possess relative to the matter under their consideration. And on an examination and consideration of the matter by such board, it shall be in their power, or of a majority of them, to reverse the decision of the commissioner, either in whole or in part; and their opinion being certified to the commissioner, he shall be governed therby, in the further proceedings to be had on such application: Provided, however, That before a board shall be instituted in any such case, the applicant shall pay to the credit of the treasury, as provided in the ninth section of this act, (see 47,) the sum of twenty−five dollars, and each of said persons so appointed shall be entitled to receive for his services in each case, a sum not exceeding ten dollars, to be determined and paid by the commissioner out of any moneys in his hands, which shall be in full compensation to, the persons who may be so appointed, for their examination and certificate as aforesaid.

28. By the twelfth section of the act of March 3, 1839, the commissioner of patents is vested with power to make all such regulation's in respect to the taking of evidence to be used in contested leases before him, as may be just and reasonable and so much of the act of July 4, 1836, as provides for a board of examiners, is thereby repealed.

29. And by the same act, sect. 11, it is provided, that in all cases where an appeal is now. allowed by law from the decision of the commissioner of patents to a board of examiners provided for in the seventh section of the act to which this is additional, the party, instead thereof, shall have a right to appeal to the chief justice of the district court of the United States for the district of Columbia, by giving notice thereof to the commissioner, and filing in the patent office, within such time as the commissioner shall appoint, his reasons of appeal, specifically set forth in writing, and also paying into the patent office, to the credit of the patent fund, the sum of twenty−five dollars. And it shall be the. duty of said chief justice, on petition, to hear and determine all such appeals, and to revise such decisions in a summary manner, on the evidence produced before the commissioner, at such early and convenient time as he may appoint, first notifying the commissioner of the time and place of hearing, whose duty it shall be to give notice thereof to all parties who appear to be interested therein, in such manner as said judge shall prescribe. The commissioner shall also lay before the said judge all the original papers and evidence in the case, together with the grounds of his decision, fully set forth in writing, touching all the points involved by the reasons of appeal, to which the revision shall be confined. And at the request of any party interested, or at the desire of the judge, the commissioner and the examiners in the patent office, may be examined under oath, in explanation of the principles of the machine, or other thing for which a patent, in such case, is prayed for. And it shall be the duty of said judge after a hearing of any such case, to return all the papers to the commissioner, with a certificate of his proce edings and decision, which shall be entered of record in the patent office; land such decision, so certified, shall govern the further proceedings of the commissioner in such case, Provided, however, That no opinion or decision of the judge in any such case, shall preclude any person interested in favor or against the validity of any patent, which has been or way hereafter be granted, from the right to contest the same in any judicial court, in any action in which its validity may come in question.

2. When there are conflicting claims.

30. It is enacted by the 8th section of the act of July 4, 1836, that whenever an application shall be made for a patent, which, in the opinion of the commissioner, would interfore with any other patent for which an application may be pending, or with any unexpired patent which shall have been granted, it shall be the duty of the commissioner to give notice thereof to such appli−cants or patentees; as the case maybe; and if either shall be

dissatisfied with the decision of the commissioner on the question of priority, right or invention, on a hearing thereof, he may appeal from such decision, on the like terms and conditions as are provided in the preceding section of this act and like proceedings, shall be had, to determine which, or whether either of the applicants is entitled to receive a patent as prayed for.

31. And by the 16th section of the same act, that whenever there shall be two interfering patents, or whenever a patent on application shall have been refused on an adverse decision of a board of examiners, on the ground that the patent applied for would interfere with an unexpired patent previously granted, any person interested in any such patent, either by assignment or otherwise, in the one case, and any such applicant in the other, may have remedy by bill in equity; and the court having cognizance thereof, on notice to adverse parties and other due proceedings had, may adjudge and declare either the patents void in whole or in part, or inoperative and invalid in any particular part or portion of the United States, according to the interest which the parties in such suit may possess in the patent or the inventions patented, and may also adjudge that such applicant is entitled, according to the principles and provisions of this act, to have and receive a patent for his invention, as specified in his claim, or for any part thereof, as the fact of priority of right or invention shall in any such case be made to appear. And such adjudication, if it be in favor of the right of such applicant, shall authorize the Commissioner to issue such patent, on his filing a copy of the adjudication, and otherwise complying with the requisitions of this act. Provided, however, that no such judgment or adjudication shall affect the rights of any persons except the parties to the action and those deriving title from or under them subsequent to the rendition of such judgment. And the commissioner is vested by the 12th section of the act of March 3, 1839, with powers to make such rules and regulations in respect to the taking of evidence to be used in contested cases before him, as may be just and reasonable.

32. The act of March 3, 1839, section 10, provides, that the provisions of the sixteenth section of the before recited act shall extend to all cases where the patents are refused for any reason whatever, either by the commissioner of patents or by the chief justice of the district of Columbia, upon appeals from the decision of said commissioner, as well as where the same shall have been refused on account of, or by reason of interference with a previously existing patent; and in all cases where there is ne opposing party, a copy of the bill shall be served upon the commissioner of patents, when the whole of the expenses of the proceeding shall be paid by the applicant, whether the final decision shall be in his favor or otherwise.

_6. Of the patent.

33. This section will be divided by considering, 1. The form of the patent. 2. The correction of the patent. 3. The special provisions of the acts of congress occasioned by the burning of the patent office. 4. The disclaimer. 5. The assignment of patents. 6. The extension of the patent. 7. The requisites to be observed after the granting of a patent to secure it.

1. Form of the patent.

34. The patent is to be issued in the form prescribed by the act of congress. The fifth section of the act of July 4, 1836, directs, that all patents issuing from said office shall be issued in the name of the United States, and under the seal of said office, and be signed by the secretary of state, and countersigned by the commissioner of the said office, and shall be recorded, together with the descriptions, specifications and drawings, in the said office, in books to be kept for that purpose. Every such patent shall contain a short description or title of the invention or discovery, correctly indicating its nature and design, and in its terms grant to the applicant or applicants, his or their heirs, administrators, executors or assigns, for a term not exceeding fourteen years, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention or discovery, referring to the specifications for the particulars thereof, a copy of which shall be annexed to the patent, specifying what the patentee claims as his invention or discovery. It is usually dated at the time of issuing it, but by a provision of the last mentioned act, section 8, whenever the applicant shall request it, the patent shall take date, from the time of filing, the specification and drawings, not, however, exceeding six months prior to the actual issuing of the patent.

2. Correction of patent.

35. It is provided by the thirteenth section of the act of July. 4, 1836, that whenever any patent which has heretofore been granted, or which shall hereafter be granted, shall be inoperative or invalid, by reason of a

defective or insufficient description or specification, or by reason of the patentee claiming in his specification as his own invention, more than he had or shall have a right to claim as new; if the error has, or shall have arisen b y inadvertency, accident or mistake, and without any fraudulent or deceptive intention, it shall be lawful for the c6mmissioner, upon the surrender to him of such patent, and the payment of the further duty of fifteen dollars, to cause a new patent to be issued to the said inventor, for the same invention, for the residue of the period then unexpired for which the original patent was granted, in accordance with the patentee's corrected description and specification. And in the event of his death, or any assignment by him made of the original patent, a similar right shall vest in his executors, administrators, or assignees. And the patent, so reissued, together with the corrected description and specification, shall have the same effect and operation in law, on the trial of all actions, hereafter commenced for causes subsequently accruing, as though the same had been originally filed in such corrected form, before the issuing out of the original patent. And whenever the original patentee shall be desirous of adding the description and specification of any new improvement of the original invention or discovery which shall have been invented or discovered by him subsequent to the date of his patent, he may, like proceedings being had in all respects as in the case of original applications, and on the payment of fifteen dollars, as hereinbefore provided, have the same annexed to the original description and specification; and, the commissioner shall certify, on the margin of such annexed description and specification, the time of its being annexed and recorded; and the same shall thereafter have the same effect in law, to all intents and purposes, as though it had been embraced in the original description and specification.

36. And it is enacted by the act of March 3, 1837, section 5, that, whenever a patent shall be returned for correction and reissue under the thirteenth section of the act to which this is additional, and the patentee shall desire several patents to be issued for distinct and separate parts of the thing patented, he shall first pay, in manner and in addition to the sum provided by that act, the sum of thirty dollars for each additional patent so to be issued; Provided, however, that no patent made prior to the aforesaid fif−teenth day of December, 1836, shall be corrected and reissued until a duplicate of the model and drawing of the thing as originally invented, verified by oath as shall be required by the commissioner, shall be deposited in the patent office: Nor shall any addition of an improvement be made to any patent heretofore granted, nor any new patent to be issued for an improvement made in any machine, manufacture, or process, to the original inventor, assignee or possessor, of a patent therefor, nor any disclaimer be admitted to record, until a duplicate model and drawing of the thing originally intended, verified as aforesaid, shall have been deposited in the patent office, if the commissioner shall require the same; nor shall any patent be granted for an invention, improvement, or discovery, the model or drawing of which shall have been lost, until another model and drawing, if required by the commissioner, shall, in like manner, be deposited in the patent office:

37. And in all such cases, as well as in those which may arise under the third section of this act, the question of compensation for such models and drawings, shall be subject to the judgment and decision of the commissioners provided for in the fourth section, under the same limitations and restrictions as are therein prescribed.

3. Special provisions occasioned by the burning the patent office.

38. The act of March 3, 1837, was passed to remedy the inconveniences arising from the burning of the patent office. It is enacted,

39. − Sect. 1. That any person who may be in possession of, or in any way interested in, any patent for an invention, disocovery, or improvement, issued prior to the fifteenth day of December, in the year of our Lord one thosand eight hundred and thirty−six, or in an assignment of any patent, or interest therein, executed, and recorded prior to the said fifteenth day of December, may, without charge, on presentation or transmission thereof to the commissioner of patents, have the same recorded anew in the patent office, together with the descriptions, specifications of claim and drawings annexed or belonging to the same; and it shall be the duty of the commisioner to cause the same, or any authenticated copy of the original record, specification, or drawing which he may obtain, to be transcribed and copied into books of record to be kept for that purpose; and wherever a drawing was not originally annexed to the patent and referred to in the specification and drawing produced as a delineation of the invention, being verified by oath in such manner as the commissioner shall require, may be transmitted and placed on file, or copied as aforesaid, together with the certificate of the oath; or such drawings may be made in the office, under the direction of the commisioner, in conformity with the specification. And it shall be the duty of the commissioner to take such measures as may be advised and determined by the board

commissioners provided for by the fourth section, of this act, to obtain the patents, specifications, and copies aforesaid, for the purpose of being so transcribed and recorded. And it shall be the duty of each of the several clerks of the judicial courts of the United States, to transmit, as soon as may be, to the commissioner of the patent office, a statement of all the authenticated copies of patents, descriptions, specifications, and drawings of inventions and discoveries made and executed prior to the aforesaid fifteenth day of December, which may be found on the files of his office; and also to make out and transmit to said commissioner for record as aforesaid, a certified copy of every such patent, description, specification, or drawing, which shall be specially required by such commissioner.

40. − Sect. 2. That copies of such record and drawings, certified by the commissioner, or, in his absence, by the chief clerk, shall be prima facie evidence of the particulars of the invention and of the patent granted therefore, in any judicial court of the United States, in all cases where copies of the original record or specification and drawings would be evidence, without proof of the loss of such originals and no patent issued therefor by the patentee or other person inprior to the aforesaid, fifteenth day of December, shall, after the first day of June next, be received in evidence in, any of the said courts in behalf of the patentee or other person who shall be in possession of the same, unless it shall have been so recorded anew, and a drawing of the invention, if separate from the patent, verified as, aforesaid, deposited in the patent office; nor shall any written assignment of any such patent, executed and, recorded prior to the said fifteenth day of December, be received in evidence in any of the said courts in behalf of the assignee or other person in possession thereof, until it shall have been so recorded anew.

41. − Sect. 3. That whenever it shall appear to the commissioner that any patent was destroyed by the burning of the patent office building on the aforesaid fifteenth day of December, or was otherwise lost prior thereto, it shall be his duty, on application terested therein, to issue a new patent for the same invention or discovery bearing the date of the original patent, with his certificate thereon that it was made and issued pursuant to the provisions of the third section of this act, and shall enter the same of record: Provided, however, That before such patent shall be issued, the applicant therefor shall deposit in the patent office a duplicate, as near as may be, of the original model, drawings, and description, with specification of the invention or discovery, verified by oath, as shall be required by the commissioner; and such patent and copies of such drawings and descriptions, duly certified, shall be admissible as evidence in any judicial court of the United States, and shall protect the rights of the patentee, his administrators, heirs and assigns, to the extent only in which they would have been protected by the original patent and specification.

42. The act of August 29, 1842, sect. 2, extends the provisions of the last section to patents granted prior to the said fifteenth day of December, though they may have been lost subsequently; provided, however, the same shall not have been recorded anew under the provisions of said act.

4. Of the disclaimer.

43. The act of March 3, 1837 sect. 7, authorizes any patentee who shall have, through inadvertence, accident, or mistake, made his specification of claim too broad, claiming more than that of which he was the original or first inventor, some material and substantial part of the thing patented being truly and justly his own, any such patentee, his administrators, executors, and assigns, whether of the, whole or of a sectional interest therein, may make disclaimer of such parts of the thing patented as the disclaimant shall not claim to hold by virtue of the patent or assignment, stating therein the extent of his interest in, such patent; which disclaimer shall be in writing, attested by one or more witnesses, and recorded in the patent office, on payment by the person disclaiming, in manner as, other patent duties are required by law to be paid, of the sum of ten dollars. And such disclaimer shall thereafter be taken and considered as part of the originals specification, to the extent of the interest which shall be possessed in the patent or right secured thereby, by the disclaimant, and by those claiming by or under him subsequent to the record thereof. But no such disclaimer shall affect any action pending at the time of its being filed, except so far as may relate to the question of unreasonable neglect or delay in filing the same.

5. Assignment of patents.

44. By virtue of the act of July 4, 1836, sect. 11, every−patent shall be assignable in law, either as to the whole interest, or, any undivided part thereof, by any instrument in writing; which assignment, and also every grant and conveyance of the exclusive right under any patent, to make and use, and to grant to others to make and use, the

thing patented within and throughout any, specified part or portion of the United States, shall be recorded in the patent office within three months from the execution thereof. This act required the payment of a fee of three dollars to be paid by the assignee, but this provison has been repealed by the act of March 3, 1839, s. 8, and such assignments, grants, and conveyances, shall, in future, be recorded without any charge whatever. But, by the act of May 27, 1848, Minot's. Stat. at Large, U. S. 231, it is enacted, That hereafter the commissioner of patents shall require a fee of one dollar for recording any assignment, grant or conveyance, of the, whole or any part of the interest in letters−patent, or power of attorney, or license to make or use the things patented, when such instrument shall not exceed three hundred words; the sum of two dollars when it shall exceed three hundred, and shall not exceed one thousand words and the sum of three dollars when it shall exceed one thousand words; which fees shall in all cases be paid in advance.

6. The extension of the patent.

45. The act of July. 4, 1836, sect. 18; directs, That whenever any patentee of an invention or discovery shall desire an extension of his patent beyond the term of its limitation, be may make application therefor, in writing, to the commissioner of the patent office, setting forth the grounds thereof, and the commissioner shall, on the applicant's paying the sum of forty dollars to the treasury, as in the case of an original application, for a patent, cause to be published, in one or more of the principal newspapers in the city of Washington, and in such other paper or papers as he may deem proper, published in the section of country most interested adversely to the extension of the patent, a notice of such application and of the time and place when and where the same will be considered, that any, person may appear and show cause why the extension should not be granted. And the secretary of state, the commissioner of the patent office, and the solicitor of, the treasury, shall constitute a board to hear and decide upon the evidence produced before them both for and against the extension, and shall sit for that purpose at the time and place designated in the published notice thereof. The patentee shall furnish to said board a statement, in writing, under oath, of the ascertained value of, the invention, and of his receipts and expenditures, sufficiently in detail to exhibit a true and faithful account of loss and profit in any manner accruing to him from and by reason of said invention. And if, upon a hearing of the matter, it shall appear to the full and entire satisfaction of said board, having due regard to the public interest therein, that it is just and proper that. the term of the patent should be extended by reason of the patentee, without neglect or fault on his part, having failed to obtain, from the use and sale of his invention, a reasonable remuneration for the time, ingenuity and expense bestowed upon the same, and the introduction thereof into use, it shall be the duty of the commissioner to renew and extend the patent, by making a thereon of such extension, for the term of seven years from and after the expiration of the first term; which certificate, with a certificate of said board of their judgment and opinion as aforesaid, shall be entered on record in the patent office; and thereupon the said patent shall have the same effect in law as though it had been originally granted for the term of twenty−one years. And the benefit of such, renewal shall extend to assignees and grantees of the right to use the thing patented, to the extent of their respective interest therein: Provided, however, That no extension of a patent shall be granted after the expiration of the term for which it was originally issued.

7. Requisites to secure the patent.

46. The act of August 29, 1842, section 6, requires, That all patentees and and assingees of patents hereafter granted, are hereby required to stamp, engrave, or cause to be stamped or engraved, on each article vended, or offered for sale, the date of the patent; and if any person or persons, patentees, or assignees, shall neglect to do so, he, she, or they, shall be liable to the same penalty, to be recovered and disposed of in the manner specified in the foregoing fifth section of this act. See 49.

_7. Duty or tax on patents.

47. The tax or duty on patents is not the same in all cases, foreigners being required to pay a greater sum than citizens, and the subjects of the king of Great Britain a greater sum than other foreigners. The ninth section of the act of July 4, 1836, requires, That before any application for a patent can be considered by the commissioner as aforesaid, the applicant shall pay into the treasury of the United States, or into the patent office, or into any of the deposit banks to the credit of the treasury, if he be a citizen of the United States, or an alien, and shall have been resident in the United States for one year next preceding, and shall have made oath of his intention to become a

citizen thereof, the sum of thirty dollars; if a subject of the king of Great Britain, the sum of five hundred dol1ars; and all other persons the sum of three hundred dollars, for which payment duplicate receipts shall be taken, one of which to be filed in the office of the treasurer. And the moneys received into the treasury under this act, shall constitute a fund for the payment of the salaries of the officers and clerks herein provided for, and all other expenses of the patent office, and to be called the patent fund.

48. When an applicant withdraws his application before the issuing of the patent, he is entitled to receive back twenty dollars of the sum he may have paid into the treasury. Act of July 4, 1836, sect. 7. And the act of March 3, 1837, section 12, enacts, That whenever the application of any foreigner for a patent shall be rejected and withdrawn for want of novelty in the invention, pursuant to the seventh, section of the act to which this is additional, the certificate thereof of the commissioner shall be a sufficient warrant to the treasurer to pay back to such applicant two−thirds of the duty he shall have paid into the treasury on account of such application. When money has been paid by mistake, as for foes accruing at the patent office, it must, by the direction of the act of August 29, 1842, section 1, be refunded.

_8. Penalty for use of patentee's marks.

49. The act of August 29, 1842, s. 5, declares, That if any person or persons shall paint or print, or mould, cast, carve, or engrave, or stamp, upon any thing made, used, or sold, by him, for the sole making or selling which he hath not or shall not have obtained letters−patent, the name or any imitation of the namer of any other person who hath or shall have obtained letters−patent for the sole making and vending of such thing, without consent of such patentee or his assigns or legal representatives; or if any person, upon any such thing not having been purchased from the patentee, or some person who purchased it from or under such patentee, or not having the license or consent of such patentee, or his assigns or legal representatives, shall write paint, print, mould, carve, engrave, stamp, or otherwise make or affix the word "patent," or the words "letters−patent," or the word "patentee," or any word or words of like kind, meaning, or import, with the view or intent of imitating or counterfeiting the stamp, mark, or other device of the patentee, or shall affix the same or any word, stamp, or device, of like import, on any unpatented article, for the purpose of deceiving the public, he, she, or they, so offending, shall be liable for such offence, to a penalty of not less than one hundred dollars, with costs, to be recovered by action in any of the circuit courts of the United States, or in any of the district courts of the United States, having the powers and jurisdiction of a circuit court; one−half of which penalty, as recovered, shall be paid to the patent fund, and the other half to any person or persons who shall sue for the same.

_9. Courts having jurisdiction in patent cases.

50. It is enacted by the 17th section of the act of July 4, 1836, That all actions, suits, controversies, and cases arising under any law of the United States, granting or confirming to inventors the exclusive right to their inventions or. discoveries, shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the powers and jurisdiction of a circuit court which courts shall have power, upon bill in equity filed by any party aggrieved, in any such case, to grant injunctions, according to the course and principles of courts of equity, to prevent the violation of the rights of any inventor as secured to him by any law of the United States on such terms and conditions as said courts may deem reasonable: Provided, however, That from all judgments and decrees, from. any, such court rendered in the premises, a writ of error or appeal, as the case may require, shall lie to the supreme court of the United States, in the same manner and under the same circumstances as is now Provided by law in other judgments and decree, of circuit courts, and in all other case's in which the court shall deem, it reasonable to allow the same.

_10. Actions for violation of patent rights.

51. The act of July 4, 1836, section 14, provides, That whenever in any action for damages for making, using, or selling the thing whereof the exclusive right is secured by any patent heretofore granted, or by any patent which may hereafter be granted, a verdict shall be rendered for the plaintiff in such action, it shall be in the power of the court to render judgment for any sum above the amount found by such verdict as the actual damages sustained by the plaintiff, not exceeding three times the amount thereof, according to the circumstances of the case, with costs; and such damages may be recovered by action on the case, in any court of competent jurisdiction, to be brought in the name or names of the person or persons interested, whether as patentee, assignees, or as grantees of the

exclusive right within and throughout a specified part of the United States.

52. − Sect. 15. That the defendant in any such action shall be permitted to plead the general issue, and to give this act, and any special matter in evidence, of which notice in writing may have been given to the plaintiff or his attorney, thiry days before trial, tending to prove that the description and specification filed by plaintiff does not contain the whole truth relative to his invention or discovery, or that it contains more than is necessary to produce the described effect; which concealment or addition shall fully appear to have, been made for the purpose of deceiving the public, or that the patentee was not, the original and first inventor or discoverer of the thing patented, or of a substantial and miaterial art thereof claimed as new, or that it had teen described in some public work anterior to the supposed discovery thereof by the patentee, or had been in public use, or on sale with the consent and allowance of the patentee before his application for a patent, or that, he had surreptitiously or unjustly obtained the patent for that which was in fact invented or discovered by another, who was using reasonable diligence in adapting and perfecting the same; or, that the patentee if an alien at the time the patent was grauted, had failed and neglected for the space of eighteen months from the date of the patent, to put and continue on sale to the public, on reasonable terms, the invention or discovery for which the patent issued; in either of which cases judgment shall be rendered for the defendant, with costs. And whenever the defendant relies in his defence on the fact of a previous invention, knowledge, or use of the thing patented, be shall state, in his notice of special matter, the names and places of residence of those whom he intends to prove to have possessed a prior knowledge of the thing and where the same had been used: Provided, however, that whenever it shall satisfactorily appear that the patentee, at the time of making his application for the patent, believed himself to be the first inventor or discoverer of the thing patented the same shall not be held to be void on account of the invention or discovery or any part thereof having been before known or used in any foreign country, it not appearing that the same or any substantial part thereof, had before been patented or described in any printed publication. And provided, also, that whenever the plaintiff shall fail to sustain his action on the ground that in his specification of claim is embraced more than that of which he was the first inventor, if it shall appear that the defendant had used or violated any part of the invention justly and truly specified and claimed as new, it shall be in the power of the court to adjudge and award as to costs as may appear to be just and equitable.

53. This last section has been modified by the act of March 3, 1837, which enacts as follows: Section 9, That anything in the fifteenth section of the act to which this is additional to the contrary notwithstanding That, whenever by mistake, accident, or inadvertence, and without any wilful default or intent to defraud or mislead the public, any patentee shall have in his specification claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the first and original inventor, and shall have no legal or just right to claim the same in every such, case the patent shall be deemed good and valid for so much of the invention or discovery as shall be truly and bona fide his own: Provided, it shall be a material and substantial part of the thing patented, and be definitely distinguishable from the other parts so claimed without right as aforesaid. And every such patentee, his executors, administrators and assigns, whether of the whole or of a sectional interest therein, shall be entitled to maintain a suit at law or in equity on such patent for any infringement of such part of the invention or, discovery as shall be bona fide his own as aforesaid, notwithstanding the specification may embrace more than he shall have any legal right to claim. But, in every such case in which a judgment or verdict shall be rendered for the plaintiff he shall not be entitled to recover costs against the defendant, unless he shall have entered at the patent office, prior to the commencement of the suit, a disclaimer of all that part of the thing patented which were so claimed without right: Provided, however, That no person bringing any such suit shall be entitled to the benefits of the provisions contained in this section, who shall have unreasonably neglected or delayed to enter at the patent office a disclaimer as aforesaid. See Bac. Ab. Monopoly Id. Prerogative, F 4; Phill. on Pat.; Fessend. on Pat.; Carpm. on Pat.; Hand on Pat.; Webst. on Pat; Coll. on Pat.; Gods. on Pat.; Holr. on Pat.; Smith on Pat.; Drewry's Patent Law Abandonment Act; Davies' Collection of Cases on the Law of Patents; Rankin's Analysis of the Law of Patents. Among the French writers are Perpigna on Patents; written in English'; and the Manuel of the same author, in French; and the works of Renouard, Dalloz, Molard, and Regnault. See the various Digests h. t. and particularly Peters' Digest, h. t.

PATENT FRENCH. The following points in relation to the patent laws of France will be found useful to those who have invented valuable machinery, and who are desirous of availing themselves of the patent laws of that country: −

27 − _1. To whom patents are granted. All persons may obtain patents in this country, whether they are men or

women, adults or infants, Frenchmen or foreigners, and in general all persons who fulfil the conditions required by the law in order to obtain patents.

3. It is not requisite that the applicant should be present, but the application must be made in his name.

4. − _2. The different kinds of patents. There are three principal kinds of patents. 1. Patents for inventions, (brevets d' invention.) 2. Patents for improvements, (brevets de perfectionnement.) 3. Patents for importa tions, (brevets d'importations.) But as patents may be taken for a combination of the above, there may be added, by such combination, four others, namely; 5. Patents for invention and improvements, (brevets d'invention et de perfectionnemen t.) 6. Patents for invention and importation, (brevets d'invention et d'importation.) 7. Patents for importation and improvement, (brevets d'importation et de perfectionnement.) 8. Patents for importation, invention and improvement (brevets d'invention, et perfectionnement et d' importation.)

5. The forms prescribed to obtain these several kinds of patents are exactly, the same, the only difference consists in the declaration of the applicant, which must be in conformity with the kind of patent he desires to obtain.

6. The applicant himself has the right to fix the number of years for, which he desires to have his patent, when he applies, to have his request registered at the prefecture. He may ha ve it for five, ten, or fifteen years. And this period he has a right to change until the patent has been signed. But with regard to patents for importations, the duration of the patent cannot extend beyond the period for which there is a patent in the country, from which the importation has been made.

7. Patents, other than for importation, may be extended as to time. There are two species of prolongation; the first, within fifteen years; the second, beyond fifteen years.

8. − _3. Cost of patents. The tax, as it is called, which must be paid in order to obtain a patent, varies according to the duration of the patent. This tax may be paid in cash or by instalments. When paid in cash, it is as follows: 1. For, five years, 300 francs, about 56 dollars and 40 cents. 2. For ten years, 800 francs, about 94 dollars. 3. For fifteen years, 1500 francs, about 282 dollars; besides some office expenses, amounting to from ten to fifteen dollars.

9. − _4. Foreign patents. The patentee in France cannot obtain a patent in a foreign country, without losing his rights in France; but this provision is easily eluded by anotber person taking out the patent in the foreign country, when patents for importations are granted. Perpigna, Manuel des Inventeurs, &o., c. 3, 5, p. 90.

PATENT LAWS OF GREAT BRITAIN AND IRELAND. The patent laws of Great Britain and Ireland will be briefly considered by taking a view of the persons to whom patents will be granted; the different kinds of patents; the time for which they are granted; and the expenses attending them.

2. − _1. To whom patents are granted. Both foreigners and subjects may obtain letters−patent; but inasmuch as the applicant must accompany his petition by a declaration made before a master in chancery, or a master extraordinary in chancery, that he has made such an invention; that he is the true and first inventor thereof; or that it is new in the kingdom, according to the special circumstances of the case, the applicant must be present in Great Britain.

3. − _2 The different kinds of patents. This will be considered by taking a view, first, of the object of a patent, and secondly, the territory over which a patent extends.

4. − 1. The thing patented must be, 1. A discovery or invention made by the applicant himself, in the United Kingdom. 2. The introduction or importation of an invention known abroad, and in this case, the introducer is the true and first inventor, within the realm. 3. Though not absolutely the true and first inventor, by reason of some one else having made the same invention and kept it secret, yet the invention must have been made public by the applicant, and as the first publisher, the applicant will be entitled to letters−patent. Novelty and utility are essential conditions of the grant, but it is of no consequence whether the discovery was known or not, in a country foreign to the United Kingdom. Webst. on Pat. 11 and 70, note w. A recent act of parliament, passed July 1, 1852, (15 & 16 Viet. cap. 83,) amended the English patent' system in several important particulars. The cardinal features of the new system are: 1, protection from the day of the application 2, one patent for the United Kingdom; 3, moderate cost and periodical paywent; 4, printing and publishing of specifications; 5, one office of patents and specifications. Webster's New Patent Law, p. 41. By the 18th sec. of said act, letters patent are sealed with the great seal of the United Kingdom, and extend to the whole of the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of man; also, to the colonies or plantations, or such of them as the applicant may designate in his petition for the letters patent and the law officer of the crown shall insert, in his

warrant for the seal ing of the patent. The patent may bear date as of the, day of the application, or of the sealing, or of any intermediate day. The patent is granted for fourteen years, subject however to the condition that it shall be void at the expiration of three years and of seven years respectively from the date thereof, unless before the expiration of the said three years and seven years, stamps of the value of X50 and X100 respectively, be affixed to the letters patent. The cost of obtaining letters patent is, in the first instance, X20 if the patent is unopposed; if opposed, there are additional fees amounting to nearly X5.

By sec. 26, letters patent obtained in the United Kingdom for patented foreign inventions are not to continue in force after the expiration of the foreign patent.

PATENT, PRUSSIAN. This subject will be considered by taking a view of the persons who may obtain patents; the nature of the patent; and the duration of the right.

2. − _1, Of the persons who may obtain patents. Prussian citizens or subjects are alone entitled to a patent. Foreigners can not obtain one.

3. − _2. Nature of the patents. Patents are granted in Prussia for an invention when the thing has been discovered or invented by the applicant. For an improvement, when considerable improvement has been made to a thing before known. And for importation, when the thing has been brought from a foreign country and put in use in the kingdom. Patents may extend over the whole country or only over a particular part.

4. − _3. Duration of patents. The patent may at the choice of the applicant, be for any period not less than six months nor more than fifteen years.

PATENT, ROMAN. The Roman patents will be considered by taking a view of the persons to whom they may be granted; the different kinds of patents; the cost of a patent; and the obligations of the patentee.

2. − _1. To whom patents are granted. Every person, whether a citizen of the estates of the pope or foreigner, man or woman, adult or infant, may obtain a patent for an invention, for an improvement, or for importation, by fulfilling the conditions prescribed in order to obtain a grant of such titles. Persons who have received a patent from the Roman government may, afterwards, without any compromise of their rights or privileges, receive a patent in a foregn country.

3. The different kinds of patents. In the Roman estates there are granted patents for invention, for improvements, and for importations.

4. − 1st. Patents for inventions are granted for, 1. A new kind of important culture. 2. A new and useful art, before unknown. 3. A new and useful process
of culture or of manufacture. 4. A new natural production. 5. A new application of a means already, known.

5. − 2d. Patents for improvements may be granted for any useful improvement made to inventions already known and used in the Roman states.

6. − 3d, Patents for importations are granted in two cases, namely: 1. For the introduction of inventions already patented in a foreign country, and the privilege of which patent yet continues. 2. For the introduction of an invention known and freely used in a foreign country, but not yet used or known in the Roman states.

7. − 3. Cost of a patent. The cost of a patent is fixed at a certain sum per annum, without regard to the length of time for which it may have been granted. It varies in relation to patents for inventions and importation. It is ten Roman crowns per annum for a patent for invention and improvement, and of fifteen crowns a year for a patent for importation.

8. − _4. Obligation of the patentee. He is required to bring into uue his invention within one year after the grant of the patent, and not to suspend the supply for the space of one year during the time the privilege shall last.

9. He is required to pay one balf of the tax or expense of his patent on receiving his patent, and the other half during the first month of the second portion of its, duration.

PATENT−OFFICE. An office bearing this name was established by law, and by the act Of congress of July 4, 1836, which repeals all acts theretofore passed in relation to patents, 4 Sharsw. cont. of Story’s L. U. S. 2504, it is provided, _1. That there shall be established and attached to the department of state, an office to be denominated the patent office; the chief officer of which shall be called the commissioner of patents, to be appointed by the president, by and with the advice and consent of the senate, whose duty it shall be, under the direction of the secretary of state, to superintend, execute, and perform, all such acts and things touching and respecting the granting and issuing of patents for new and useful discoveries, inventions, and improvements, as are herein provided for, or shall hereafter be, by law, directed to be done and performed, and shall have the charge and custody of all the books, records, papers, models, machines, and all other things belonging to said office. And said

commissioner, shall receive the same compensation as is allowed by law to the commissioner of the Indian department, and shall be entitled to send and receive letters and packages by mail, relating to the businesss of the office, free of postage.

2. − _2. That there shall be in said office, an inferior officer, to be appointed by the said principal officer, with the approval of the secretary of state, to receive an annual salary of seventeen hundred dollars, and to be called the chief clerk of the patent−office; who in all cases during the necessary absence of, the commissioner, or when the said 'principal office shall become vacant, shall have the charge and custody of the seal, and of the records, books, papers, machines, models, and all other things belonging to the said office, and shall perform the duties of commissioner during such vacancy. And the, said commissioner may also, with like approval, Appoint an examining Clerk, at an annual salary of fifteen hundred dollars; two other clerks at twelve hundred dollars each, one of whom shall be a competent draughtsman; one other clerk at one thousand dollars; a machinist at twelve hundred and fifty dollars; and a messenger at seven hundred dollars. And said commissioner, clerks, and every other person appointed and employed in said office, shall be disqualified, and interdicted from acquiring or taking, except by inheritance, daring the, period for which they shall hold their appointments, respectively, any right or interest, directly or indirectly, in any patent for an invention or discovery which has been, or may hereafter be granted.

3. − _3. That the said principal officer, and every other person to be appointed in the said office, shall, before he enters upon the duties of his office or appointment, make oath or affirmation, truly and faithfully to execute the trust committed to him. And the said commissioner and the chief clerk shall also, before entering upon their duties, severally give bond with sureties to the treasurer of the United States, the former in the sum of ten thousand dollars, and the latter, in the sum of five thousand dollars, with condition to render a true and faithful account to him or his successor in office, quarterly of all moneys which shall be by them respectively received for duties on patents, and for copies of records, and drawings, and all other moneys received by virtue of said office.

4. − _4. That the said commissioner shall cause a seal to be made and provided for the said office, with such device as the president of the United States shall approve, and copies of any records, books, papers, or drawings, belonging to the said office, under the signature of the said commissioner, or when the office shall be vacant, under the signature of the chief clerk, with the said seal affixed, shall be competent evidence in all, cases in which the original records, books, papers, or drawing, could be evidence. And any person making application therefor, may have certified copies of the records, drawings, and other papers deposited in said office, on paying, for the written copies, the sum of ten cents for, every page of one hundred words; and for copies of drawing, the reasonable expense of making the same.

PATENTEE. He to whom a patent has been granted. The term is usually applied to one who has obtained letters−patent for a new invention.

2. His rights are, 1. To make, sell and enjoy the profits, during the existence, of his rights, of the invention or discovery patented. 2. To recover damages for a violation of such rights. 3. To have an injunction to prevent any infringement of such rights.

3. His duties are to supply the public, upon reasonable terms, with the thing patented.

PATER. Father. A term used in making genealogical tables.

PATER FAMILLIAS, civil law. One who was sui juris and consequently was not either under parental power, nor under that of a master; a child in his cradle, therefore, could have been pater familias, if he had neither a master nor a father. Lec. Elem. _127, 128.

PATERNA PATERNIS. This expression is used in the French law to signify that in a succession, the property coming from the father of the deceased, descends to his paternal relations.

PATERNAL. That which belongs to the father or comes from him: as, paternal power, paternal relation, paternal estate, paternal line. Vide Line.

PATERNAL POWER. Patria potestas, The, authority lawfully exercised by parents, over their children. It will be proper to consider, 1. Who are entitled to exercise this power. 2. Who are subject to it. 3. The extent of this power.

2. − 1. As a general rule the father is entitled to exert the paternal power over his children. But for certain reasons, when the father acts improperly, and against the interest of those over whom nature and the law have given him authority, he loses his power over them. It being a rule that whenever the good of the child requires it, the courts will deliver the custody of the children to others than the father. And numerous instances may be found

where, for good reasons, the custody will be given to the mother.

3. The father of a bastard child has no control over him; the mother has the right to the custody and control of such child. 2 Mass. 109; 12 Mass. 887.

4. − 2. All persous are subject to this power until they arrive at the full age of twenty−one years. A father may, however, to, a certain extent, deprive himself of this unlimited paternal power, first, by delegating it to others, as when he binds his son an apprentice; and, secondly, when he abandons his children, and permits them to act for themselves. 2 Verm. Cas. 290; 2 Watts, 408 4 S. & R. 207; 4 Mass. 675.

5. − 3. The principle upon which the law is, founded as to the extent of paternal power is, that it be exerted for the benefit of the child. The child is subject to the lawful commands of the father to attend to his business, because by being so subjected he acquires that discipline and the practice of attending to business, which will be useful to him in after life. He is liable to proper correction for the same reason. 1 Bouv. Inst. n. 326−33. See Correction; Father; Mother; Parent.

PATERNAL PROPERTY. That which descends or comes from the father and other ascendants, or collaterals of the paternal stock. Domat. Liv. Prel. tit, 3, s. 2.

PATERNITY, The state or condition of a father.

2. The hushand is prima facie presumed to be the father of his wife's chhildren, born during coverture, or within a competent time afterwards pater is est quem nuptim demonstrant. 7 N. S. 553. But this presumption may be rebutted by showing circumstances which render it impossible that the hushand can be the father. 6 Binn. 283; 1 Browne's R. Appx. xlvii.; Hardin's R. 479; 8 East, R. 193; Stra. 51, 940. 4 T. R; 356;. 2 M. & K. 349; 3 Paige's R. 139; I Sim. & Stu. 150; Turn. & Russ. 138; 1 Bouv. Inst. n. 302, et seq.

3. The declarations of both or one of the spouses, however, cannot affect the condition of a child born during the marriage. 7 N. S. 553; 3 Paige's R. 139. Vide Bastard;. Bastardy;, Legitimacy; Maternity; Pregnancy.

PATHOLOGY, med. jur. The science or doctrine of diseases. In cases of homicides, abortions, and the like, it is of great consequence to the legal practitioner to be acquainted, in some degree, with pathology. 2 Chit. Pr. 42, note.

PATRIA. The country; the men of the neighborhood competent to serve on a jury; a jury. This word is nearly synonymous with pais. (.q. v.)

PATRIA POTESTAS, Civil law. Paternal power; (q. v.) the authority which is lawfully exercised by the father over his children.

PATRICIDE. One guilty of killing his father.

PATRIMONIAL. A thing, which comes from the father, and by extension, from the mother or other ancestor.

PATRIMONIUM, civil law. That which is capable, of being inherited.

2. Things capable of being possessed by a single person exclusively of all others, are, in the Roman or civil law, said to be in patrimonio; when incapable of being so possessed they are extra−patrimonium.

3. In general, things may be inherited, but there are some which are said to be extra patrimonium, or which are not in commerce. These are such as are common, as the light of heaven, the air, the sea, and the like. Things public, as rivers, harbors, roads, creeks, ports, arms of the sea, the, sea−shore, highways, bridges, and the like. Things which belong to cities and municipal corporations, as public−squares, streets, market houses, and the like. See, 1 Bouv. Inst. n. 421 to 446.

PATRIMONY. Patrimony is sometimes understood to mean all kinds of property but its more limited signification , includes only such estate, as has descended in the same family and in a still more confined sense, it is only that which has descended or been devised in a direct line from the father, and by extension, from the mother, or other ancestor.

2 . By patrimony, patrimonium, is also understood the father's duty to take care of his children. Sw. pt. 3, _18, n. 31, p. 235.

PATRINUS. A godfather.

PATRON, eccles. law. He who has the disposition and gift of an ecclesiastical benefice. In the Roman law it signified the former master of a freedman. Dig. 2, 4, 8, 1.

PATRONAGE. The right of appointing to office; as the patronage of the president of the United States, if abused, may endanger the liberties of the people.

2. In the ecclesiastical law, it signifies the right of presentation to a church or ecclesiastical benefice. 2 Bl. Com. 21.

PATRONUS, Roman civil law. This word is a modification of the, Latin word pater, father; a denomination applied by Romulus to the first, senators of Rome, and which they always afterwards bore. Romulus at first appointed a hundred of them. Seven years afterwards, in consequence of the association of Tatius to the Romans, a hundred more were appointed, chosen from the Sabines. Tarquinius Priscus increased the number to three hundred. Those appointed by Romulus and Tatius were called patres majorum gentium and the others were called patres minorum gentium. These and their descendants constituted, the nobility of Rome. The rest of the people were called lebeians, every one of whom was obliged to choose one of these fathers as his patron. The relation thus constituted involved important consequences. The plebeian, who was called (cliens) a client, was obliged to furnish the means of maintenance to his chosen patron; to firnish a portion for his patron's daughters; to ransom him and his sons, if captured by an enemy, and pay all sums recovered against him by judgment, of the 'courts. The patron, on the other hand, was, obliged to watch over the interests of his client, whether present or absent to protect his person and property, and especially to defend him in all, actions brought against him for any cause. Neither could accuse or bear testimony against the other, or give contrary votes, &c. The contract was of a sacred nature,; the violation of it was a sort of treason, and punishable as such. According to Cicero, (De Repub. II. 9,) this relation formed an integral part of the governmental system, Et habutit plebem in clientelas principum descri ptum, which he affirms was eminently useful. Blackstone traces the system of vassalage to this. ancient relation of patron and client. It was, in fact, of the same nature as the feudal institutions of the middle ages, designed to maintain order in a rising state by a combination of the opposing interests of the aristocracy and of the common people, upon the principle of reciprocal bonds for mutual interests, Dumazeau, Barreau Romain, _III. Ultimately, by force of radical changes in the institution, the word patronus came to signify notbing more than an advocate. Id. IV

PATRUELIS, civil law. A cousin german by the father's side; the son or daughter of a father's brother. Dig. 38i 10, 1.

PATRUUS, citq law. An uncle by the father's side, a father's brother. Dig. 38, 10, 10, Patruus magnus, is a grandfather's brother, grand uncle. Patruus major, is a great−grandfather's brother. Patruus maximus, is a, great−grandfather's father's brother.

PAUPER. One so poor that he must be supported at the public expense.

2. The statutes of the several states make ample provisions for the support of the poor. It is not within the plan of this work even to give an abstract of such extensive legislation. Vide 16 Vin. Ab. 259;Botts on thc Poor Laws; Woodf. Landl. & Ten. 901.

PAVIAGE. Contribution or tax. for paving the streets or highways.

PAWN. A pledge. Vide Pledge.

PAWN−BROKER. One who is lawfully authorized to lend money, and actually lends it, usually in small sums, upon pawn or pledge.

PAWNEE. He who receives a pawn or pledge.

2. The rights of the pawnee are to have the exclusive possession of the pawn; to use it, when it is for the advantage of the pawner, but, in such case, when he makes a profit out of it, he must account for the same. 1 Car. Law Rep. 8 7; 2 Murph.

3. The pawnee is bound to take reasonable care, of the pledge, and to return it to the, pawnor, when the obligation of the latter has been performed.

4. The pawnee has two remedies to enforce his claim; the first, to sell the pawn, after having given due notice; and, secondly, by action. See. 1 Bouv. Inst. n. 1046, 1050.

PAWNOR. One who, being liable to an engagement, gives to the person to whom he is liable, a thing to be held as a security for the payment of his debt or the fulfilment of his liability.

2. The rights of the pawnor are to redeem the pledge, at any time before it is sold.

3. His oblioations are to warrant the title of the pledge, and to redeem it at the time agreed upon. See 1 Bouv. lnst. n. 1045.

PAYEE. The person in whose favor a bill of exchange is made payable. Vide Bills of Exchange.

PAYMENT, contracts. That which is given to execute what has been promised; or it is the fulfilment of a promise. Solvere dicimus cum quis fecit, quod facere promisit. But though this is the general acceptation of the word, yet by payment is understood, every way by which the creditor is satisfied or ought to be, and the debtor, liberated for example, an accord and satisfaction will operate as a payment. If I owe you a sum of money, for the

security of which I give you a mortgage, and afterwards you consent to receive in payment a tract of land, from the moment the sale is complete, the first obligation, with all its accessories, is extinct, although you should be afterwards evicted of the property sold. 7 Toull. n. 46 2 Mart. Lo. Rep. N. S. 144; S. C. 2 Harr. Cond. Lo. R. 621, 624.

2. This subject will be considered by taking a separate view of the person by whom the payment may be made; to whom it may be made; when and where it ought to be made; how it ought to be made; the effect of the payment.

3. − 1. The payment may be made by the real debtor and other persons from whom the creditor has a right to demand it; an agent may make payment for his principal; and any mode of payment by the agent, accepted and received as such by the creditor, as an absolate payment will have the effect to discharge the principal, whether known or unknown, and whether it be in the usual course of business or not. If, for example, a factor or other agent should be employed to purchase goods for his principal, or should be entrusted, with money to be paid for him, and, instead of receiving the money, the creditor or seller should take the note of the factor or agent; payable at a future day, as an absolute payment, the principal would be discharged from the debt. 3 Chit. Com. Law, 204; 1 B. & Ald. 14; 6 B. & C. 160; 7 B. & C. 17. When such note has been, received conditionally and not as an absolute payment, it would not have the effect of a payment by the principal; and whether so received or not is a fact to be decided by the jury. 1 Cowen, R, 259, 383; 9 John. R:, 310; 6 Cowen, R. 181; 7 John. R. 311; 15 John. R. 276; 3 Wend. R. 83; 6 Wend. R. 475; 10 Wcnd. R. 271; 5 John., R. 68; 1 Liverm. Ag. 207.

4. Payment may also be made by a third person a stranger to the contract.

5. In the payment of mortgages, it is aÿ20rule, that the personal estate shall be applied to discharge them when made by the testator or intestate himself, to secure the payment of a debt due by bim, because the personal estate was benefited by the money borrowed; and it makes no difference whether the mortgaged lands have been devised, or come to the heir by descent. 2 Cruise, 1 Dig. 147. The testator may, however, exempt the personal estate from the payment, and substitute the real in its place. But when the mortgage was not given by the deceased, but be acquired the real estate subject to it, it never was his debt, and therefore his personal estate is not bound to pay the mortgage debt, but it must be paid by the real estate. 2 Cruise, Dig. 164−8; 3 John. Chan. R. 252; 2 P. Wms. 664, n. 1; 2 Bro. C. C. 57; 2 Bro. C. C. 101, 152; 5 Ves. jr. R. 534; 14 Ves. 417.

6. − 2. It must be made by the creditor himself, or his assigns, if known, or some person authorized by him, either expressly or by implication; as to his factor; Cowp. 251: to his broker, 1 Maul. & Selw. 576; 4 Id. 566; 4 Taunt. 242; 1 Stark. Ca. 238.

7. In the case of partners and other joint creditors, or joint execuutors or administrators, payment to one is generally a valid payment. When an infant is a creditor, payment must be made to his guardian. A payment may be good when made to a person who had no authority to receive it, if the creditor shall afterwards ratify it. Poth. Obl. n. 528.

8. − 3. Time and place of payment: first, as to the time. When the contract is, that payment shall be made at a future time, it is clear that nothing can be demanded until after it has elapsed, or until any other condition to which the payment is subject, has been fulfilled; and in a case where the goods had been sold at six or nine months, the debtor had the option as to those two terms. 5 Taunt, 338. When no time of payment is mentioned in the agreement, the money is payable immediately. 1 Pet. 455; 4 Rand. 346.

9. Secondly, the payment must be made at the place agreed upon in the contract; but in the absence of such agreement, it must be made agreeably to the presumed intention of the parties, which, among other things, may be ascertained by the nature of the thing to be paid or delivered, or by the custom in such cases.

10. − 4. How the payment ought to be made. To make a valid payment, so as to compel the receiver to take it, the whole amount due must be paid; Poth. Obl. n. 499, or n. 534, French edition; when a part is accepted, it is a payment pro tanto. The payment must be made in the thing agreed upon; but when it ought to be made in money, it must be made in the lawful coin of the country, or in bank notes which are of the value they are represented to be. A payment made in bills of an insolvent bank, though both parties may be ignorant of its insolvency, it has been held, did not discharge the debt; 11 Verm. 676; 6 Hill, 340; but see 1 W. & S. 92; 8 Yerg. 175; and a payment in counterfeit bank notes is a nullity. 2 Hawks, 326; 3 Hawks, 568, 6 Hill, 840. Iii general, the payment of a part of a debt, after it becomes due, will not discharge the whole, although there may be an agreement by the debtor that it should have that effect, because there is no consideration for such agreement. But see 3 Kelly's R. 210, contra. A payment of a part, before it is due, will discharge the whole, when so agreed.

11. − 5. The payment, when properly made, discharges the debtor from his obligation. Sometimes a payment extinguishes several obligations; this happens when the thing given to discharge an obligation was the same which is the object of another obligation. Poth. Obl. 552.

12. A single payment may discharge several debts; as, for example if Peter be indebted to Paul one thousand dollars, and Paul being indebted to James, Paul give an order to Peter to pay Tames this money; the payment made by Peter to James discharges both the obligations due by Peter to Paul, and by Paul to James. Poth. Ob. n. 553. This rule, that a payment made in order to acquit or discharge an obligation, extinguishes the other obligations which have the same object, takes place also when there are several debtors as regards the whole of them. If, for example, Peter trust Paul on the credit of James, a payment by Paul discharges both himself and James. Poth. Obl. n. 554.

13. But in case money or other things have been delivered to a person who was supposed to be entitles to them as a creditor, when he was not, this is not a payment, and the whole, if nothing was due, or if the debt was less than the amount paid, the surplus, may be recovered in action for money bad and received. Vide, generally, Bouv. Inst. Index, h. t.; Com. Di g. 473; 8 Com. Dig. 607; 16 Vin 6; 1 Vern. by Raith. 3, 150 n. Yelv. 11 a; 1 Salk. 22; 15 East, 12; 8 East, R. 111; 2 Ves. jr. 11; Phil. Ev. Index, b, t,; Stark. Ev. h. t.; Louis. Code, art. 2129; Ayl. Pand. 565; 1 Sell. Pr. 277; Dane's Ab. Index, h. t.; Toull. lib. 3, tit. 3, c. 5; Pardes. part 2, tit. 2, c. 1 Merl. Repert. h. t.; Chit. Contr. Index, h. t.; 3 Eng. C. L. Rep. 130. As to what transfer will amount to an assignment or a payment and extinguishment of a claim, see 6 John. Ch. R. 395; Id. 425; 2 Ves. jr. 261 18 Ves. jr. 384; 1 N. H. Rep. 167; 1 N. H. Rep. 252; 2 N. H. Rep. 300; 3 John. Ch. R. 53.

PAYMENT, pleadings. The name of a plea by which the defendant alleges that he has paid the debt claimed in the declaration; this plea must conclude to the country. 4 Call, 371; Minor, 137. Vide Solvit ad them; Solvit post diem.

PAYS. The country. Trial per pays, is a trial by the country; that is, by jury. Vide Pais.

PAX REGIS, Eng. law. The king's peace. In ancient times there were certain limits which were known by this name. The pax regis, or the verge of the court, as it was afterwards called, extended from the palace gate to the distance of three miles, three furlongs, three acres, nine feet, nine palms and nine barleycorns. Crabb's C. L. 41.

PEACE. The tranquillity enjoyed by a political society, internally, by the good order which reigns among its members, and externally, by the good understanding it has with all other nations. Applied to the internal regulations of a nation, peace imports, in a technical sense, not merely a state of repose and security, as opposed to one of violence and warfare, but likewise a state of public order and decorum. Ham. N. P. 139; 12 Mod. 566. Vide, generally, Bac. Ab. Prerogative, D 4; Hale, Hist. P. C. 160; 3 Taunt. R. 14; 1 B. & A. 227; Peake, R. 89; 1 Esp. R. 294; Harr. Dig. Officer, V 4; 2 Benth. Ev. 319, note. Vide Good behaviour; Surety of the peace.

PECK. A measure of capacity, equal to two gallons. Vide Measure.

PECULATION, civil law. The unlawful appropriation by a depositary of public funds, of the property of the government entrusted to his care, to his own use or that of others. Domat, Suppl. au Droit Public, liv. 3, tit. 5.

PECULIAR, eccles. law. In England, a particular parish or church, which has, within itself, independent of the ordinary jurisdiction, power to grant probate of wills, and the like. 1 Eng. Eccl. R. 72, note; Shelf. on Mar. & Div. 538. Vide Court of peculiars.

PECULIUM, civil law. The savings which were made by a son or slave with the consent of his father or master. Inst. 2, 9, 1; Dig. 15, 1, 5, 3; Poth. ad Pand. lib. 50 , tit. 17, c. 2, art. 3.

2. A master is not entitled to the extraordinary earnings of his apprentice, which do not interfere with his services so as to affect his master's profits. An apprentice was therefore decreed to be entitled to salvage in opposition to his master's claim for it. 2 Cranch, 270.

PECUNIA, civil law, property By the term was understood, 1. Money. 2. Every thing which constituted the private property of an individual, or which was a part of his fortune; a slave' a field, a house, and the like, were so considered.

2. It is in this sense the law of the Twelve Tables said; Uti quisque pater familias legassit super pecunia tutelare rei suae, ita jus esto. In whatever manner a father of a family may have disposed of his property, or of the tutorship of his things, let this disposition be law. 1 Lecons Elem. du Dr. Civ. Rom. 288.

3. Flocks were the first riches of the ancients, and it is from pecus that the words pecania, peculium, peculatus, are derived. Co. Litt. 207.

PECUNIARY. That which relates to money.

2. Pecuniary punishment, is one which imposes a fine on a convict; a pecuniary legacy is one which entitles the legatee to receive a sum of money, and not a specific chattel. In the ecclesiastical law, by pecuniary causes is understood such causes as arise either from the withholding ecclesiastical dues, or the doing or omitting such acts relating to the church, in consequence of which damage accrues to the plaintiff. In England these causes are cognizable in the ecclesiastical courts.

PEDIGREE, descents. A succession of degrees from the origin; it is the state of the family as far as regards the relationship of the different members, their births, marriages and deaths; this term is applied to persons or families, who trace their origin or descent.

2. On account of the difficulty of proving in the ordinary manner by living witnesses, facts which occurred in remote times, hearsay evidence (q. v.) has been admitted to prove a pedigree. 1 Phil. Ev. 186; 1 Stark. Ev. 55; 10 Serg. & Rawle, 383; 2 Supp. to Ves. jr. 110; 8 Com. Dig. 583 1 Pet. 337; 6 Pet., 81; 13 Pet. 209 1 Wheat. 6; 3 Wash. C. C. R. 243; 4 Wash.C.C.R.186; 3Bouv.Inst.n. 3067. Vide Descent; Line.

PEDIS POSSESSIO. A foothold, an actual possession. To constitute adverse possession there must be pedis possessio, or a substantial enclosure. 2 Bouv. Inst. n. 2193; 2 N. & M. 343.

PEDLARS. Persons who travel about the country with merchandise, for the purpose of selling it. They are obliged under the laws of perhaps all the states to take out licenses, and to conform to the regulations which those laws establish.

PEER. Equal. A man's peers are his equals. A man is to be tried by his peers.

2. In England and some other countries, this is a title of nobility; as, peers of the realm. In the United States, this equality is not so much political as civil. A man who is not a citizen, is nevertheless to be tried by citizens.

PEERESS. A noblewoman, the wife of a peer.

PEINE FORTE ET DURE, Eng. law A punishment formerly inflicted in England, on a person who, being arraigned of felony, refused to plead and put himself on his trial, and stubbornly stood mute. He was to be laid down and as much weight was to be put upon him as he could bear, and more, until he died. This barbarous punishment has been abolished. Vide Mute.

PELTWOOL. The wool pulled off the skin or pelt of a dead ram.

PENAL. That which may be punished; that which inflicts a punishment.

PENAL STATUTES. Those which inflict a penalty for the violation of some of their provisions.

2. It is a rule of law that such statutes must be construed strictly. 1 Bl. Com. 88; Esp. on Pen. Actions, 1; Bosc. on Conv.; Cro. Jac. 415; 1 Com. Dig. 444; 5 Com. Dig. 360; 1 Kent, Com. 467. They cannot, therefore, be extended by their spirit or equity to other offences than those clearly described and provided for. Paine, R. 32; 6 Cranch, 171.

PENALTY, contr. A clause in an agreement, by which the obligor agrees to pay a certain−sum of money, if he shall fail to fulfil the contract contained in another clause of the same agreement.

2. A penal clause in an agreement supposes two obligations, one of which is the primitive or principal; and the other, is, conditional or accessory.

3. The penal obligation differs from an alternative obligation, for this is but one in its essence; while a penalty always includes two distinct engagements, and, when the first is fulfilled, the second is void. When a breach has taken place, the obligee has his option to require the fulfilment of the first obligation, or' the payment of the penalty, in those cases which cannot be relieved in equity, when the penalty is considered as liquidated damages. Dalloz, Dict. mots Obligation avec clause penale.

4. It is difficult, in many cases, to distinguish between a penalty and liquidated damages. In general, the courts have inclined to consider the sum reserved by such agreement to be a penalty, rather than as stipulated damages. (q. v.)

5. The sum will be considered as a penalty, and not as liquidated damages, in the following cases: 1. When the parties to the agreement have expressly declared the sum to be a penalty, and no other intent is to be collected from the instrument. 2 Bos. & P. 346; 1 H. Bl. 227; 1 Pick. 45 1; 4 Pick. 179; 7 Wheat. 14; 3 John. Cases, 297. 2. When from the form of the instrument, as in the case of a money bond, it is sufficiently clear a penalty was intended.

3. When it is doubtful whether the sum was intended as a penalty or not, and a certain damage or debt is made payable on the face of the instrument. 2 B. & P. 350; 3 C. & P. 240. 4. When the agreement was evidently made for the attainment of another object, to which the sum, specified is wholly collateral, 11 Mass. 76; 15 Mass. 488; 1

Bro. C. C. 418, 419. 5. When the agreement contains several matters, of different degrees of importance, and yet the sum mentioned is payable for the breach of any, even the least. 6 Bing. 141; 5 Bing. N. C. 390; 7 Scott, 364. 6. When the contract is not under seal, and the damages may be ascertained and estimated; and this though the parties have expressly declared the sum to be as liquidated damages. 2B. & Ald. 704; 6 B. & C. 216; 4 Dall. 150; 5 Cowen, 144. See 2 Greenl. Ev. 258. 1 Holt N. P. C. 43 1 Bing. R. 302; S. C. 8 Moore, 244; 4 Burr. 2229.

6. The penalty remains unaffected, although the condition may have been partially performed; as in a case where the penalty was one thousand dollars, and the condition was to pay an annuity of one hundred dollars, which had been paid for ten years; the penalty was still valid. 5 Verm. 365.

7. A distinction seems to be made in courts of equity between penalties and forfeitures. In cases of forfeiture for the breach of any covenant other than a covenant to pay rent, relief will not be granted in equity, unless upon the ground of accident, fraud, mistake, or surprise, when the breach is capable of compensation. Edin. on Inj. 22; 16 Ves. 403; S. C. 18 Ves. 58 3 Ves. 692; 4 Bouv. List. n. 3915.

8. By penalty is understood, also, the punishment inflicted by law for its violation; the term is mostly applied to a pecuniary punishment. See 6 Pet. 404; 10 Wheat. 246; 1 Gall. R. 26; 2 Gall. R. 515; 1 Mason, R. 243; 3 John. Cas. 297: R. 451; 15 Mass. 488; 7 John. 72 4 Mass. 433; 8 Mass. 223; 8 Com. Dig. 846; 16 Vin. Ab. 301; 1 Vern. 83, n.; 1 Saund. 58, n.; 1 Swans. 318; 1 Wash. C. C. R. 1; 2 Wash. C. C. R. 323; Paine, C. C. R. 661; 7 Wheat. 13. See, generally, Bouv. Inst. Index, h. t.

PENANCE, eccl. law. An ecclesiastical punishment, inflicted by an ecclesiastical court, for some spiritual offence. Ayl. Par. 420.

PENCIL. An instrument made of plumbago, black lead, red chalk, or other suitable substance, for writing without ink.

2. It has been holden that a will written with a pencil, could riot, on this account, be annulled. 1 Phillim. R. 1; 2 Phillim. 173.

PENDENTE LITE. Pending the continuance of an action, while litigation continues.

2. An administrator is appointed, pendente lite, when a will is contested. 2 Bouv. Inst. n. 1557. Vide ddministrator.

PENDENTES, civil law. The fruits of the earth not yet separated from the ground; the fruits hanging by the roots. Ersk. Inst. B. 2, Lit. 2, s. 4.

PENETRATION, crimes. The act of inserting the penis into the female organs of generation. 9 Car. & Pa 118; S. C. 38 E. C. L. R. 63. See 8 Car. & Payne, 614; 34 E. C. L. R. 562; 5 C. & P. 321; S. C. 24 E, C. L. R. 339; 9 C. & P. 31 Id. 752; 38 E. C. L. R. 320. But in order to commit the crime of rape, it is requisite that the penetration should be such as to rupture the hymen. 5 C. & P. 321.

2. This has been denied to be sufficient to constitute a rape without emission. (q. v.) Bee, on this subject, 12 Co. 37; Hawk. bk 1, c. 41, s. 3; 1 Hale, P. C. 628; 1 East, P. C. 437, 8; Russ & Ry. C. C. 519; 6 C. & P. 351; 5 C. & P. 297, 321; S. C. 24 E. C. L. R. 339; 1 Chit. Med. Jur. 386 to 395; 1 Virg. Cas. 307; 4 Mood. Cr. Cas. 142, 337; 4 Car. & P. 249; 1 Par. & Fonbl. 433; 2 Mood. & M. C. N. P. 122; 1 Russ. C. & M 560; 1 East, P. C. 437.

PENITENTIARY. A prison for the punishment of convicts.

2. There are two systems of penitentiaries in the United States, each of which is claimed to be the best by its partizans: the Pennsylvauia system and the New York system. By the former, convicts are lodged in separate, well lighted, and well ventilated cells, where they are required to work, during stated hours. During the whole time of their confinement, they are never permitted to see or speak with each other. Their usual employments are shoemaking, weaving, winding yarn, picking wool, and such like business. The only punishments to which convicts are subject, are the privation of food for short periods, and confinement without labor in dark, but well aired cells; this discipline has been found sufficient to keep perfect order; the whip ana all other corporal punishments are prohibited. The advantages of the plan are numerous. Men cannot long remain in solitude without labor convicts, when deprived of it, ask it as a favor, and in order to retain it, use, generally, their best exertions to do their work well; being entirely secluded, they are of course unknown to their fellow prisoners, and can form no combination to escape while in prison, or associations to prey upon society when they are out; being treated with kindness, and afforded books for their instruction and amusement, they become satisfied that society does not make war upon them, and, more disposed to return to it, which they are not prevented from doing by the exposure of their fellow prisoners, when in a strange place; the labor of the convicts tends greatly to defray the expenses of the prison. The disadvantages which were anticipated have been found, to be groundless.; Among these were, that

the prisoners would be unhealthy; experience has proved the contrary; that they would become insane, this has also been found to be otherwise; that solitude is incompatible with the performance of business; that obedience to the discipline of the prison could not be enforced. These and all other objections to this system are, by its friends, believed to be without force.

3. The New York system, adopted at Auburn, which was probably copied from the penitentiary at Ghent, in the Netherlands, called La Maison de Force, is founded on the system of isolation and separation, as well as that of Pennsylvania, but with this difference, that in the former the prisoners are confined to their separate cells during the night only; during the working hours in the day time they labor together in work shops appropriated to their use. They cat their meals together, but in such a manner as not to be able to speak with each other. Silence is also imposed upon them at their labor. They perform the labor of carpenters, blacksmiths, weavers, shoemakers, tailors, coopers, gardeners, wood sawyers, &c. The discipline of the prison is enforced by stripes, inflicted by the assistant keepers, on the backs of the prisoners, though this punishment is rarely exercised. The advantages of this plan are, that the convicts are in solitary confinement during the night; that their labor, by being joint, is more productive; that, inasmuch as a clergyman is employed to preach to the prisoners, the system affords an, opportunity for mental and moral improvements. Among the objections made to it are, that the prisoners have opportunities of communicating with each other, and of forming plans of escape, and when they are out of prison, of associating together in consequence of their previous acquaintance, to the detriment of those who wish to return to virtue, and to the danger of the public; that the discipline is degrading, and that it engenders bitter resentment in the mind of the convict. Vide, generally, on the subject of penitentiaries, Report of the Commissioners (Messrs. King, Shaler, and Wharton,) on the Penal Code of Pennsylvania; De Beaumont and De Toqueville, on the Penitentiary System of the United States; Mease on the Penitentiary System of Pennsylvania; Carey on ditto; Reports of the Boston Prison Discipline Society; Livingston's excellent Introductory Report to the Code of Reform and Prison Discipline, prepared for the state of Louisiana; Encycl. Americ. art. Prison Discipline; De. I'Etat Actuel des Prisons en France, par L. M. More au Christophe; Dalloz, Dict. mot Peine, _1, n. 3, and Supplem. mots Prisons et Bagnes.

PENNSYLVANIA. The name of one of the original states of the United States of America. Pennsylvania was occupied by planters of various nations, Dutch Swedes, English, and others; but obtained no separate name until the year 1681, when Charles II. granted a charter to William Penn, by which he became its proprietary, saving, however, allegiance to the crown, which retained the sovereignty of the country. This charter authorized the proprietary, his heirs and successors, by and with the assent of the freemen of the country, or their deputies assembled for the purpose, to make laws. Their laws were required to be consonant to reason, and not repugnant or contrary, but as near as conveniently could be to the laws and statutes of England. Pennsylvania was governed by this charter till the period of the Revolution.

2. The constitution of the state was adopted on the second day of September, 1790, and amended by a convention selected by the people, on the twenty−second day of February, 1838. The powers of the government are divided into three distinct branches: the legislative, the executive and the judiciary.

3. − 1st. The legislative power is vested in a general assembly, which consists of a senate and house of representatives.

4. − 1. The senate will be considered with reference to the qualification of the electors; the qualification of the members; the length of time for which they are elected; and the time of their election. 1. In elections by the citizens, every white freeman of the age of twenty−one years having resided in this state one year, and in the election district where he offers to vote ten days immediately preceding such election, and within two years paid a state or county tax, which shall have been assessed at least ten days before the election, shall enjoy the rights of an elector. But a citizen of the United States who had previously been a qualified voter of this state and removed therefrom and returned, and who shall have resided in the election district and paid taxes as aforesaid, shall be entitled to vote after residing in the state six months: Provided, that white freemen, citizens of the United States, between the ages of twenty−one and twenty−two years, and having resided in the state one year, and in the election district ten days as aforesaid, shall be en−titled to vote although they shall not have paid taxes. Art. 3, s. 1. 2. No person shall be a senator who shall not have attained the age of twenty−five years, and have been a citizen and inhabitant of the state four years next before his election, and the last year thereof an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public business of the United States or of this state; and no person elected as aforesaid, shall hold the said office after he shall have removed from such

district. Art. 1, s. 8. 3. The number of senators shall never be less than one−fourth, nor greater than one−third of the number of representatives. Art. 1, s. 6. 4. The senators hold their office for three years.

5. Their election takes place on the second Tuesday of October, one−third of the senate each year.

6. − 2. The house of representatives will be treated of in the same manner which has been observed in considering the senate. 1. The electors are qualified in the same manner as the electors of the senate. 2. No person shall be a representative who shall Dot have attained the age of twenty−one years, and have been a citizen and inhabitant of the state three years next preceding his election, and the last year thereof an inhabitant of the district in and for which he shall be chosen a representative, unless be shall have been absent on the public business of the United States or of this state. Art. 1, s. 3. 3. The number of representatives shall never be less than sixty, nor greater than one hundred. Art. 1, s. 4. 4. They are elected yearly. 5. Their election is on the second Tuesday of October, yearly.

6. − 2d. The supreme executive power of this commonwealth is vested in a governor. 1. He is elected by the electors of the legislature. 2. He must be at least thirty years of age, and have been a citizen and an inhabitant of the state seven years next before his election, unless he shall have been absent on the public business of the United States or of this state. Art. 2, s. 4. 3. The governor shall hold his office during three years from the third Tuesday of January next ensuing his election, and shall not be capable of holding it longer than six in any term of nine years. Art. 2, s. 3. 4. His principal duties are enumerated in the second article of the constitution, as follows: The governor shall at stated times receive for his services a compensation which shall be neither increased or diminished during the period for which he shall have been elected. He shall be commander−in−chief of the army and navy of this commonwealth, and of the militia, except when they shall be called into the actual service of the United States. He shall appoint a secretary of the commonwealth during pleasure; and he shall nominate, and by and with the advice and consent of the senate appoint, all judicial officers of courts of record, unless otherwise provided for in this constitution. He shall have power to fill all vacancies that may happen in such judicial offices during the recess of the senate, by granting commissions which shall expire at the end of their next session: Provided, that in acting on executive nominations the senate shall sit with open doors, and in confirming or rejecting the nominations of the governor, the vote shall be taken by yeas and nays. He shall have power to remit fines and forfeitures, and grant reprieves and pardons, except in cases of impeachment. He may require information in writing from the officers in the executive departiment, upon any subject relating to the duties of their respective offices. He shall, from time to time, give to the general assembly information of the state of the commonwealth, and recommend to their consideration such measures as he shall judge expedient. He may, on extraordinary occasions, convene the general assembly; and, in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months. He shall take care that the laws be faithfully executed. In case of the death or resignation of the governor, or of his removal from office, the speaker of the senate shall exercise the office of governor until another governor shall be duly qualified; but in such case another governor shall be chosen at the next annual election of representatives, unless such death, resignation or removal shall occur within three calendar months, immediately preceding such next annual election, in which case a governor shall be chosen at the second succeeding annual election of representatives. And if the trial of a contested election shall continue longer than until the third Monday of January next ensuing the election of governor, the governor of the last year, or the speaker of the senate who may be in the exercise of the executive authority, shall continue therein until the determination of such contested election, and until a governor shall be duly qualified as aforesaid.

7. − 3d. The judicial power of the commonwealth is vested by the fifth article of the constitution as follows:

_1. The judicial power of this commonwealth shall be vested in a supreme Court, in courts of oyer and terminer and general jail delivery, in a court of common pleas, orphans' court, register's court, and a court of quarter sessions of the peace, for each county in justices of the peace, and in such other courts as the legislature may from time to time establish.

8. − _2. By an amendment to this constitution, the judges of the supreme court, of the several courts of common pleas, and of such other courts of record as are or shall be established by law, shall be elected by the qualified electors, as provided by act of April 15, 1851. Pam. Laws, 648. The judges of the supreme court shall hold their offices for the term of fifteen years if they shall so long behave themselves well. The president judges of the several courts of common pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years if they shall so long

behave themselves well. The associate judges of the courts of common pleas shall hold their offices for the term of five years if they shall so long behave themselves well. But for any reasonable cause which shall not be sufficient ground of impeachment, the governor may remove any of them on the address of two−thirds of each branch of the legislature. The judges of the supreme court and the presidents of the several courts of common pleas, shall at stated times receive for their services an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office, but they shall receive no fees or perequisites of office, nor hold any other office of profit under this commonwealth.

9. − _3. Until otherwise directed by law, the courts of common pleas shall continue as at present established. Not more than five counties shall at any time be included in one judicial district organized for said courts.

10. − _4. The jurisdiction of the supreme court shall extend over the state; and the judges thereof shall, by virtue of their offices be justices of oyer and terminer and general jail delivery, in the several counties.

11. − _5. The judges of the court of common pleas, in each county, shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery, for the trial of capital and other offenders therein; any two of the said judges, the president being one, shall be a quorum; but they shall not hold a court of oyer and terminer, or jail delivery, in any county, when the judges, of the supreme court, or any of them, shall be sitting in the same county. The party accused, as well as the commonwealth, may, under such regulations as shall be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the supreme court,

12. − _6. The supreme court, and the several courts of common pleas, shall, besides the powers heretofore usually exercised by them, have the power of a court of chancery, so far as relates to the perpetuating If testimony, the obtaining of evidence from places not within the state, and the care of the persons and estates of those who are non compotes mentis. And the legislature shall vest in the said courts such other powers to grant relief in equity, as shall be found necessary; and may, from time to time, enlarge or diminish those powers, or vest them in such other courts as they shall judge proper for the due administration of justice.

13, − _7. The judges of the court of common pleas of each county, any two of whom shall be a quorum, shall compose the court of quarter sessions of the peace, and orphans' court thereof: and the register of wills, together with the said judges, or, any two of them, shall compose the register's court of each county.

14. − _8. The judges of the courts of common pleas shall, within their respective counties, have the like powers with the judges of the supreme court, to issue writs of certiorari to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done.

15. − _9. The president of the court in each circuit within such circuit, and the judges of the court of common pleas within their respective counties, shall be justices of the peace, so far as relates to criminal matters.

16. − _10. A register's office, for the probate of wills and granting letters of administration, and an office for the recording of deeds, shall be kept in each county.

17. − _11. The style of all process shall be "The commonwealth of Pennsylvania." 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."

PENNY. The name of an English coin of the value of one−twelfth part of a shilling. While the United States were colonies, each adopted a monetary system composed of pounds, shillings, and pence. The penny varied in value in the different colonies.

PENNYWEIGHT. A troy weight which weighs twenty−four grains, or one−twentieth part of an ounce. Vide Weights.

PENSION. A stated and certain allowance granted by the government to an individual, or those who represent him, for valuable services performed by him for the country. The government of the United States has, by general laws, granted pensions to revolutionary soldiers; vide 1 Story's Laws U. S. 68; 101, 224, 304, 363, 371, 451; 2 Id. 903, 915, 983, 1008, 1240; 3 Id. 1662, 1747, 1778, 1794, 1825, 1927; 4 Id. 2112, 2270, 2329, 2336, 2366; to naval officers and sailors; 1 Stor. L. U. S. 474, 677, 769; 2 Id. 1284 3 Id. 1565; to the army generally; 1 Id. 360, 412, 448; 2 Id. 833; 3 Id 1573 to the militia generally; 1 Id. 255, 360, 412, 488 2 Id. 1382; 3 Id. 1873; in the Seminole war, 3 Id. 1706.

PENSIONER. One who is supported by an allowance at the will of another. It is more usually applied to him who receives an annuity or pension from the government.

PEONIA, Spanish law. A portion of land which was formerly given to a simple soldier, on the conquest of a country. It is now a quantity of land, of different size in different provinces. In the Spanish possessions in

America, it measured fifty feet front and one hundred feet deep. 2 White's Coll. 49; 12 Pet. 444, notes.

PEOPLE. A state; as, the people of the state of New York; a nation in iis collective and political capacity. 4 T. R. 783. See 6 Pet. S. C. Rep. 467.

2. The word people occurs in a policy of insurance. The insurer insures against "detainments of all kings, princes and people." He is not by this understood to insure against any promiscuous or lawless rabble which may be guilty of attacking or detaining a ship. 2 Marsh. Ins. 508. − Vide Body litic; Nation.

PER. By. When a writ of entry is sued out against the alienee, or descendant of the original disseisor, it is then said to be brought in the per, because the writ states that the tenant had not the entry but by the original wrong doer. 3 Bl. Com. 181. See Entry, writ of.

PER CAPITA, by the head or polls. This term is applied when an estate is to be divided share and share alike. For example, if a legacy be given to the issue of A B, and A B at the time of his death, shall have two children and two grandchildren, his estate shall be divided into four parts, and the children and grandchildren shall each have one of them. 3 Ves. 257; 13 Ves. 344. Vide 1 Rop. on Leg. 126, 130.

PER AND CUI. When a writ of entry is brought against a second alienee or descendant from the disseisor, it is said to be in the per and cui, because the form of the writ is that the tenant had not entry but by and under a prior alienee, to whom the intruder himself demised it. 2 Bl. Com. 181. See Entry, writ of.

PER FRAUDEM. A replication to a plea where something has been pleaded which would be a discharge, if it had been honestly pleaded, that such a thing has been obtained by fraud for example, where on debt on a statute, the defendant pleads a prior action depending, if such action has been commenced by fraud the plaintiff may reply per fraudem: 2 Chit. Pl. *675.

PER INFORTUNIUM, criminal law. Homicide per infortunium, or by misadventure, is said to take place when a man in doing a lawful act, without any intent to hurt, unfortunately kills another. Hawk. bk. 1, c. 11; Foster, 258, 259; 3 Inst. 56.

PER MINAS. By threats. When a man is compelled to enter into a contract by threats or menaces, either for. fear of loss of life, or mayhem, he may avoid it afterwards. 1 Bl. Com. 131; Bac. Ab. Duress; Id. Murder A. See Duress.

PER MY ET PER TOUT. By every part or parcel and by the whole. A joint tenant of lands is said to be seised per my et per tout. Litt. s. 288. See 7 Mann. & Gr. 172, note c.

PER QUOD, pleading. By which; whereby.

2. When the plaintiff sues for an injury to his relative rights, as for beating his wife, his child,, or his servant, it is usual to lay the injury with a per quod. In such case, after complaining of the injury, say to the wife, the declaration proceeds, "insomuch that the said E F, (the wife,) by means of the premises, then and there became and was sick, sore, lame, and disordered, and so remained and continued for a long space of time, to wit, hitherto, whereby he, the said A B, (the plaintiff,) lost", &c. 2 Chit. Pl. 422; 3 Bl. Com. 140. It seems that the per quod is not traversable. 1 Saund. 298; 1 Ld. Raym. 410; 2 Keb. 607; 1 Saund. 23, note 5.

PER STIRPES. By stock; by roots.

2. When, for example, a man dies intestate, leaving children and grandchildren, whose parents are deceased, the estate is to be divided not per capita, that is, by each of the children and grandchildren taking a share, but per stirpes, by each of the children taking a share, and the grandchildren, the children of a deceased child, taking a share to be afterwards divided among themselves per capita.

PERAMBULATIONE FACIENDA, WRIT DE, Eng. law. The name of a writ which is sued by consent of both parties, when they are in doubt as to the bounds of their respective estates; it is directed to the sheriff to make perambulation, and to set the bounds and limits between them in certainty. F. N. B. 309.

2. "The writ de perambulatione facienda is not known to have been adopted in practice in the United States," says Professor Greenleaf, Ev. _146 note, "but in several of the states, remedies somewhat similar in principle have been provided by statutes."

PERCH, measure. The length of sixteen feet and a half: a pole or rod of that length. Forty perches in length and four in breadth make an acre of land.

PERDONATIO UTLAGARIAE, Eng. law. A pardon for a man who, for contempt in not yielding obedience to the process of the king's courts, is outlawed, and afterwards, of his own accord, surrenders.

PEREGRINI, civil law. Under the denomination of peregrini were comprehended all who did not enjoy any capacity of the law, namely, slaves, alien enemies, and such foreigners as belonged to nations with which the

Romans bad not established relations. Sav. Dr. Rom. _66.

PEREMPTORY. Absolute; positive. A final determination to act without hope of renewing or altering. Joined to a substantive, this word is frequently used in law; as peremptory action; F. N. B. 35, 38, 104, 108; peremptory nonsuit; Id. 5, 11; peremptory exception; Bract. lib. 4, c. 20; peremptory undertaking; 3 Chit. Pract. 112, 793; peremptory challenge of jurors, which is the right to challenge without assigning any cause. Inst. 4, 13, 9 Code, 7, 50, 2; Id. 8, 36, 8; Dig. 5, 1, 70 et 73.

PEREMPTORY DEFENCE, equity, pleading. A defence which insists that the plaintiff never had the right to institute the suit, or that if he had, the original right is extinguished or determined. 4 Bouv. Inst. n. 4206.

PEREMPTORY PLEA, pleading. A plea which denies the plaintiff's cause of action. 3 Bouv. Inst. n. 2891. Vide Plea.

PERFECT. Something complete.

2. This term is applied to obligations in order to distinguish those which may be enforeed by law, which are called perfect, from those which cannot be so enforced, which are said to be im perfect. Vide Imperfect; Obligations.

PERFIDY The act of one who has engaged his faith to do a thing, and does not do it, but does the contrary. Wolff, _390.

PERFORMANCE. The act of doing something; the thing done is also called a performance; as, Paul is exonerated from the obligation of his contract by its performance.

2. When it contract has been made by parol, which, under the statute of frauds and perjuries, could not be enforced, because it was not in writing, and the party seeking to avoid it, has received the whole or a part performance of such agreement, he cannot afterwards avoid it; 14 John. 15; S. C. 1 John. Ch. R. 273; and such part performance will enable the other party to prove it aliunde. 1 Pet. C. C. R. 380; 1 Rand. R. 165; 1 Blackf. R. 58; 2 Day, R. 255; 1 Desaus. R. 350; 5 Day, R. 67; 1 Binn. R. 218; 3 Paige, R. 545; 1 John. Ch. R. 131, 146. Vide Specific performance.

PERIL. The accident by which a thing is lost Lee,. Dr. Rom. 911.

PERILS OF THE SEA, contracts. Bills of lading generally contain an exception that the carrier shall not be liable for "perils of the sea." What is the precise import of this phrase is not perhaps very exactly settled. In a 'strict sense, the words perils of the sea, denote the natural accidents peculiar to the sea; but in more than one instance they have been held to extend to events not attributable to natural causes. For instance, they have been held to include a capture by pirates on the high sea and a case of loss by collision by two ships, where no blame is imputable to either, or at all events not to the injured ship. Abbott on Sh. P. 3, C. 4 _1, 2, 3, 4, 5, 6; Park. Ins. c, 3; Marsh. Ins. B. 1, c. 7, p. 214; 1 Bell's Comm. 579; 3 Kent's Comm. 251 n. (a); 3 Esp. R. 67.

2. It has indeed been said, that by perils of the sea are properly meant no other than inevitable perils or accidents upon the sea, and, that by such perils or accidents common carriers are, prima facie, excused, whether there be a bill of lading containing the expression of "peril of the sea," or not. 1 Conn. Rep. 487.

3. It seems that the phrase perils of the sea, on the western waters of the United States, signifies and includes perils of the river. 3 Stew. & Port. 176.

4. If the law be so, then the decisions upon the meaning of these words become important in a practical view in all cases of maritime or water carriage.

5. It seems that a loss occasioned by leakage, which is caused by rats gnawing a hole in the bottom of the vessel, is not, in the English law, deemed a loss by peril of the sea, or by inevitable casualty. 1 Wils. R. 281; 4 Campb. R. 203. But if the master had used all reasonable precautions to prevent such loss, as by having a cat on board, it seems agreed, it would be a peril of the sea, or inevitable accident. Abbott on Shipp. p. 3, c. 3, _9; but see 3 Kent's Comm. 243, and note c. In conformity to this rule, the destruction of goods at sea by rats has, in Pennsylvania, been held a peril of the sea, where there has been no default in the carrier. 1 Binn. 592. But see 6 Cowen, R. 266, and 3 Kent's Com. 248, n. c. On the other hand, the destruction of a ship's bottom by worms in the course of a voyage, has, both in America and England, been deemed not to be a peril of the sea, upon the ground, it would seem, that it is a loss by ordinary wear and decay. Park. on Ins. c. 3; 1 Esp. R. 444; 2 Mass. R. 429 but see 2 Cain. R. 85. See generally, Act of God; Fortuitous Event;. Marsh. Ins. eh. 7; and ch. 12, _1.; Hildy on Mar. Ins. 270.

PERIPHRASIS. Circumlocution; the use of other words to express the sense of one.

2. Some words are so technical in their meaning that in charging offences in indictments they must be used or the

indictment will not be sustained; for example, an indictment for treason must contain the word traitorously; (q. v.) an indictment for burglary, burglariously; (q. v.) and feloniously (q. v.) must be introduced into every indictment for felony. 1 Chitty's Cr. Law, 242; 3 Inst. 15; Carth. 319; 2 Hale , P. C. 172; 184;, 4 Bl. Com. 307; Hawk B. 2, c. 25, s. 55; 1 East P. C. 115; Bac. Ab. Indictment, G 1; Com.]Dig. Indictment, G 6 Cro. C. C. 37.

TO PERISH. To come to an end; to cease to be; to die.

2. What has never existed cannot be said to have perished.

3. When two or more persons die by the same accident, as a shipwreck, no presumption arises that one perished before the other. Vide Death. Survivorship.

PERISHABLE GOODS, Goods which are lessened in value and become worse by being kept. Vide Bona Peritura.

PERJURY, crim. law. This offence at common law is defined to be a wilful false oath, by one who being lawfully required to depose the truth in any judicial proceedings, swears absolutely in a matter material to the point in question, whether he be believed or not.

2. If we analyze this definition we will find, 1st. That the oath must be wilful. 2d. That it must be false. 3d. That the party was lawfully sworn. 4th. That the proceeding was judicial. 6th. That the assertion was absolute. 6th. That the falsehood was material to the point in question.

3. − 1. The intention must be wilful. The oath must be taken and the falsehood asserted with deliberation, and a consciousness of the nature of the statement made; for if it has arisen in consequence of inadvertency, surprise or mistake of the import of the question, there was no corrupt motive; Hawk. B. 1, c. 69, s. 2; but one who swears wilfully and deliberately to a matter which he rashly believes, which is false, and which he had no probable cause for believing, is guilty of perjury. 6 Binn. R. 249. See 1 Baldw. 370; 1 Bailey, 50.

4. − 2. The oath must be false. The party must believe that what he is swearing is fictitious; for, if intending to deceive, he asserts that which may happen to be true, without any knowledge of the fact, he is equally criminal, and the accidental truth of his evidence will not excuse him. 3 Inst. 166 Hawk. B. 1, c. 69, s. 6.

5. − 3. The party must be lawfully sworn. The person by whom the oath is administered must have competent authority to receive it; an oath, therefore, taken before a private person, or before an officer having no jurisdiction, will not amount to perjury. 3 Inst. 166; 1 Johns. R. 498; 9 Cowen, R. 30; 3 M'Cord, R. 308; 4 M'Cord, It. 165; 2 Russ. on Cr. 520; 3 Carr. & Payne, 419; S. C. 14 Eng. Com. Law Rep. 376; 2 Chitt. Cr. Law, 304; 4 Hawks, 182; 1 N. & M. 546; 3 M'Cord, 308; 2 Hayw. 56; 8 Pick. 453.

6. − 4. The proceedings must be judicial. Proceedings before those who are in any way entrusted with the administration of justice, in respect of any matter regularly before them, are considered as judicial for this purpose. 2 Chitt. Crim. C. 303; 2 Russ. on Cr. 518; Hawk. B. 1, c. 69, s. 3. Vide 3 Yeates, R. 414; 9 Pet. Rep. 238. Perjury cannot therefore be committed in a case of which the court had no jurisdiction. 4 Hawks, 182; 2 Hayw. 56; 3 M'Cord, 308; 8 Pick. 453: 1 N. & McC. 546.

7. − 5. The assertion must be absolute. If a man, however, swears that he believes that to be true which he knows to be false, it will be perjury. 2 Russ. on Cr. 518; 3 Wils. 427; 2 Bl. Rep. 881; 1 Leach, 242; 6 Binn. Rep. 249; Lofft's Gilb. Ev. 662.

8. − 6. The oath must be material to the question depending. Where the facts sworn to are wholly foreign from the purpose and altogether immaterial to the matter in question, the oath does not amount to a legal perjury. 2 Russel on Cr. 521; 3 Inst. 167; 8 Ves. jun. 35; 2 Rolle, 41, 42, 369; 1 Hawk. B. 1, c. 69, s. 8; Bac. Ab. Perjury, A; 2 N. & M. 118; 2 Mis. R. 158. Nor can perjury be assigned upon the valuation under oath, of a jewel or other thing, the value of which consists in estimation. Sid. 146; 1 Keble, 510.

9. It is not within the plan of this work to cite all the statutes passed by the general government, or the several states on the subject of perjury. It is proper, however, here to transcribe a part of the 13th section of the act of congress of March 3, 1825, which provides as follows: "If any person in any case, matter, bearing, or other proceeding, when an oath or affirmation shall be required to be taken or administered under or by any law or laws of the United States, shall, upon the taking of such oath or affirmation, knowingly and willingly swear or affirm falsely, every person, so offending, shall be deemed guilty of perjury, and shall, on conviction thereof, be punished by fine, not exceeding two thousand dollars, and by imprisonment and confinement to bard labor, not exceeding five years, according to the aggravation of the offence. And if any person or persons shall knowingly or willingly procure any such perjury to be committed, every person so offending shall be deemed guilty of subornation of perjury, and shall on conviction thereof, be punished. by fine, not exceeding two thousand dollars,

and by imprisonment and confinement to bard labor, not exceeding five years, according to the aggravation of the offence."

10. In general it may be observed that a perjury is committed as well by making a false affirmation, as a false oath. Vide, generally, 16 Vin. Abr. 307; Bac. Abr. h. t.; Com. Dig. Justices of the Peace, B 102 to 106; 4 Bl. Com. 137 to 139; 3 Inst. 163 to 168; Hawk. B. 1, c. 69; Russ. on Cr. B. 5, c. 1; 2 Chitt. Cr. L. c. 9; Roscoe on Cr. Ev. h. t.; Burn's J. h. t. Williams' J. h. t.

PERMANENT−TRESPASSES. When trespasses of one and the same kind, are committed on several days, and are in their nature capable of renewal or continuation, and are actually renowed or continued from day to day, so that the particular injury, done on each particular day, cannot be distinguished from what was done on another day, these wrongs are called permanent trespasses. in declaring for such trespasses they may be laid with a continuando. 3 Bl. Com. 212; Bac. Ab. Trespass, B 2; Id. 1 2; 1 Saund. 24, n. 1. Vide Continuando; Trespass.

PERMISSION. A license to do a thing; an authority to do an act which without such authority would have been unlawful. A permission differs from a law, it is a cheek upon the operations of the law.

2. Permissions are express or implied. 1. Express permissions derogate from something which before was forbidden, and may operate in favor of one or more persons, or for the performance of one or more acts, or for a longer or shorter time. 2. Implied, are those, which arise from the fact that the law has not forbidden the act to be done. 3. But although permissions do not operate as laws, in respect of those persons in whose favor they are granted; yet they are laws as to others. See License.

PERMISSIVE. Allowed; that which may be done; as permissive waste, which is the permitting real estate to go to waste; when a tenant is bound to repair he is punishable for permissive waste. 2 Bouv. Inst. n. 2400. See Waste.

PERMIT. A license or warrant to do something not forbidden bylaw; as, to land goods imported into the United States, after the duties have been paid or secured to be paid. Act of Cong. of 2d March, 1799, s. 49, cl. 2. See form of such a permit, Gord. Dig. Appendix, No. II. 46.

PERMUTATION, civil law. Exchange; barter.

2. This contract is formed by the consent of the parties, but delivery is indispensable; for, without it, it mere agreement. Dig. 31, 77, 4; Code, 4, 64, 3.

3. Permutation differs from sale in this, that in the former a delivery of the articles sold must be made, while in the latter it is unnecessary. It agrees with the contract of sale, however, in the following particulars: 1. That he to whom the delivery is made acquires the right or faculty of prescribing. Dig. 41, 3, 4, 17. 2. That the contracting parties are bound to guaranty to each other the title of the things delivered. Code, 4, 64, 1. 3. That they are bound to take back the things delivered, when they have latent defects which they have concealed. Dig. 21, 1, 63. See Aso & Man. Inst. B. 2, t. 16, c. 1; Nutation; Transfer.

PERNANCY. This word, which is derived from the French prendre, to take, signifies a taking or receiving.

PERNOR OF PROFITS. He who receives the profits of lands, &c. A cestui que use, who is legally entitled and actually does receive the profits, i's the pernor of profits.

PERPETUAL. That which is to last without limitation as to time; as, a perpetual statute, which is one without limit as to time, although not expressed to be so.

PERPETUATING TESTIMONY. The act by which testimony is reduced to writing as prescribed by law, so that the same shall be read in evidence in some suit or legal proceedings to be thereafter instituted. The origin of this practice may be traced to the canon law cap. 5, it ut lite non contestata, &c., et ibi. Bockmer, n. 4; 8 Toull. n. 22. Vide Bill to perpetuate testimony.

PERPETUITY, estates. Any limitation tending to take the subject of it out of commerce for a longer period than a life or lives in being, and twenty−one years beyond; and in case of a posthumous child, a few months more, allowing for the term of gestation; Randell on Perpetuities, 48; or it is such a limitation of property as renders it unalienable beyond the period allowed by law. Gilbert on Uses, by Sugden, 260, note.

2. Mr. Justice Powell, in Scattergood v. Edge, 12 Mod. 278, distinguished perpetuities into two sorts, absolute and qualified; meaning thereby, as it is apprehended, a distinction between a plain, direct and palpable perpetuity, and the case where an estate is limited on a contingency, which might happen within a reasonable compass of time, but where the estate nevertheless, from the nature of the limitation, might be kept out of commerce longer than was thought agreeable to the policy of the common law. But this distinction would not now lead to a better understanding or explanation of the subject; for whether an estate be so limited that it cannot take effect, until a period too much protracted, or whether on a contingency which may happen within a moderate compass of time, it

equally falls within the line of perpetuity and the limitation is therefore void; for it is not sufficient that an estate may vest within the time allowed, but the rule requires that it must. Randell on Perp. 49. Vide Cruise, Dig. tit. 32, c. 23; 1 Supp. to Ves. Jr. 406; 2 Ves. Jr. 357; 3 Saund. 388 h. note; Com. Dig. Chancery, 4 G 1; 3 Chan. Cas. 1; 2 Bouv. Inst. n. 1890.

PERQUISITES. In its most extensive sense, perquisites signifies anything gotten by industry, or purchased with money, different from that which descends from a father or ancestor. Bract. lib. 2, c. 30, n. 8; et lib. 4, c. 22. In a more limited sense it means something gained by a place or office beyond the regular salary or fee.

PERSON. This word is applied to men, women and children, who are called natural persons. In law, man and person are not exactly−synonymous terms. Any human being is a man, whether he be a member of society or not, whatever may be the rank he holds, or whatever may be his age, sex, &c. A person is a man considered according to the rank he holds in society, with all the rights to which the place he holds entitles him, and the duties which it imposes. 1 Bouv. Inst. n. 137.

2. It is also used to denote a corporation which is an artificial person. 1 Bl. Com. 123; 4 Bing. 669; C. 33 Eng. C. L R. 488; Wooddes. Lect. 116; Bac. Us. 57; 1 Mod. 164.

3. But when the word "Persons" is spoken of in legislative acts, natural persons will be intended, unless something appear in the context to show that it applies to artificial persons. 1 Scam. R. 178.

4. Natural persons are divided into males, or men; and females or women. Men are capable of all kinds of engagements and functions, unless by reasons applying to particular individuals. Women cannot be appointed to any public office, nor perform any civil functions, except those which the law specially declares them capable of exercising. Civ. Code of Louis. art. 25.

5. They are also sometimes divided into free persons and slaves. Freemen are those who have preserved their natural liberty, that is to say, who have the right of doing what is not forbidden by the law. A slave is one who is in the power of a master to whom he belongs. Slaves are sometimes ranked not with persons but things. But sometimes they are considered as persons for example, a negro is in contemplation of law a person, so as to be capable of committing a riot in conjunction with white men. 1 Bay, 358. Vide Man.

6. Persons are also divided into citizens, (q. v.) and aliens, (q. v.) when viewed with regard to their political rights. When they are considered in relation to their civil rights, they are living or civilly dead; vide Civil Death; outlaws; and infamous persons.

7. Persons are divided into legitimates and bastards, when examined as to their rights by birth.

8. When viewed in their domestic relations, they are divided into parents and children; hushands and wives; guardians and wards; and masters and servants son, as it is understood in law, see 1 Toull. n. 168; 1 Bouv. Inst. n. 1890, note.

PERSONABLE. Having the capacities of a person; for example, the defendant was judged personable to maintain this action. Old Nat. Brev. 142. This word is obsolete.

PERSONAL. Belonging to the person.

2. This adjective is frequently employed in connection with substantives, things, goods, chattels, actions, right, duties, and the like as personal estate, put in opposition to real estate; personal actions, in contradistinction to real actions; personal rights are those which belong to the person; personal duties are those which are to be performed in person.

PERSONAL ACTIONS. Personal actions are those brought for the specific goods and chattels; or for damages or other redress for breach of contract or for injuries of every other description; the specific recovery of lands, tenements and hereditaments only excepted. Vide Actions, and 1 Com. Dig. 206, 450; 1 Vin. Ab. 197; 3 Bouv. Inst. n. 2641, et. seq.

PERSONAL LIBERTY. Vide Liberty.

PERSONAL PROPERTY. The right or interest which a man has in things personal; it consists of things temporary and movable, and includes all subjects of property not of a freehold nature, nor descendable to the heirs at law. Things of a movable nature, when a right can be had in them, are personal property, but some things movable are not the subject of property; as light and air. Under the term personal property, is also included some property which is in its nature immovable, distinguished by the name of chattels real, as an estate for years; and fixtures (q . v.) are sometimes classed among personal property. A crop growing in the ground is considered personal property. so far as not to be considered an interest in land, under the statute of frauds. 11 East, 362; 1 Shopl. 337; 5 B & C. 829; 10 Ad. & E. 753; 9 B. & C. 561; sed vide 9 B. & C. 561.

2. It is a general principle of American law, that stock held in corporations, is to be considered as personal property; Walk. Introd. 211; 4 Dane's Ab. 670; Sull. on Land Tit. 71; 1 Hill. Ab. 18; though it was held that such stock was real estate; 2 Conn. R. 567; but, this being found inconvenient, the law was changed by the legislature.

3. Property in personal chattels is either absolute or qualified; absolute, when the owner has a complete title and full dominion over it; qualified, when −he has a temporary or special interest, liable to be totally divested on the happening of some particular event. 2 Kent, Com. 281.

4. Considered in relation to its use, personal property is either in possession, that is, in the actual enjoyment of the owner, or, in action, that is, not in his possession, but in the possession of another, and recoverable by action.

5. Title to personal property is acquired. 1st. By original acquisition by occupancy; as, by capture in war; by finding a lost thing. 2d. By original acquisition; by accession. 3d. By original acquisition, by intellectual labor; as, copyrights and patents for inventions. 4th. IV transfer, which is by act of law. 1. By forfeiture. 2. By judgment. 3. By insolvency. 4. By intestacy. 5th. By transfer, by act of the party. 1 . Gifts. 2. Sale. Vide, generally, 16 Vin. Ab. 335; 8 Com. Dig. 474; Id. 562; 1 Supp. to Ves. Jr. 49, 121, 160, 198, 255, 368, 9, 399, 412, 478; 2 Ibid. 10, 40, 129, 290, 291, 341; 1 Vern. 3, 170, 412; 2 Salk. 449; 2 Ves. Jr. 59, 336, 176, 261, 271, 683; 7 Ves. 453. See Pew; Property; Real property.

PERSONAL REPRESENTATIVES. These words are construed to mean the executors or administrators of the person deceased. 6 Mad. R. 159; 2 Mad. R. 155; 5 Ves. 402; 1 Madd. Ch. 108.

PERSONAL SECURITY. The legal and uninterrupted enjoyment by a man of his life, his body, his health and his reputation. 1 Bouv. Inst. n. 202.

PERSONALITY OF LAWS. Those laws which regulate the condition, state, or capacity of persons. The term is used in opposition to those laws which concern property, whether real or personal, and things. See Story, Confl. of L. 23; and Reality of laws.

PERSONAITY. An abstract of personal; as, the action is in the personalty, that is, it is brought against a person for a personal duty which he owes. It also signifies what belongs to the person; as, personal property.

TO PERSONATE, crim. law. The act of assuming the character of another without lawful authority, and, in such character, doing something to his prejudice, or to the prejudice of another, without his will or consent.

2. The bare fact of personating another for the purpose of fraud, is no more than a cheat or misdemeanor at common law, and punishable as such. 2 East, P. C. 1010; 2 Russ. on Cr. 479.

3. By the act of congress of the 30th April, 1790, s. 15, 1 Story's Laws U. S. 86, it is enacted, that " if any person shall acknowledge, or procure to be acknowledged in any court of the United States, any recognizance, bail or judgment, in the name or names of any other person or persons not privy or consenting to the same, every such person or persons, on conviction thereof, shall be fined not exceeding five thousand dollars, or be imprisoned not exceeding seven years, and whipped not exceeding thirty−nine stripes, Provided nevertheless. that this act shall not extend to the acknowledgment of any judgment or judgments by any attorney or attorneys, duly admitted, for any person or persons against whom any such judgment or judgments shall be bad or given." Vide, generally, 2 John. Cas. 293; 16 Vin. Ab. 336; Com. Dig. Action on the case for a deceit, A 3.

TO PERSUADE, PERSUADING. To persuade is to induce to act: persuading is inducing−others to act. lnst. 4, 6, 23; Dig. 11, 3, 1, 5.

2. In the act of the legislature which declared that " if any person or persons knowingly and willingly shall aid or assist any enemies at open war with this state, &c. by persuading others to enlist for that purpose, &c., he shall be adjudged guilty of high treason;" the word persuading, thus used; means to succeed: and there must be an actual enlistment, of the person persuaded in order to bring the, defendant within the intention of the clause. 1 Dall. R. 39; Carr. Crim. L 237; 4 Car. & Payne, 369 S. C. 1 9 E. C L. R. 425; 9 Car. & P. 79; and article Administering; vide 2 Lord Raym. 889. It may be fairly argued, however, that the attempt to persuade without success would be a misdemeanor. 1 Russ. on Cr. 44.

3. In England it has been decided, that to incite and procure a person to commit suicide, is not a crime for which the party could be tried. 9 C. & P. 79; 38 E. C. L. R. 42; M. C. C. 356. Vide Attempt; Solicitation.

PERSUASION. The act of influencing by expostulation or request. While the persuasion is confined within those limits which leave the mind free, it may be used to induce another to make his will, or even to make it in his own favor; but if such persuasion should so far operate on the mind of the testator, that he would be deprived of a perfectly free will, it would vitiate the instrument. 3 Serg. & Rawle, 269; 5 Serg. & Rawle, 207; 13 Serg. & Rawle, 323.

PERTINENT, evidence. Those facts which tend to prove the allegations of the party offering them, are called pertinent; those which have no such tendency are called impertinent, 8 Toull. n. 22. By pertinent is also meant that which belongs. Willes, 319.

PERTURBATION. This is a technical word which signifies disturbance, or infringement of a right. It is usually applied to the disturbance of pews, or seats in a church. In the ecclesiastical courts actions for these disturbances are technically called "suits for perturbation of seat." 1 Phillim. 323. Vide Pew.

PESAGE, mer. law. In England a toll bearing this name is charged for weighing avoirdupois goods other than wool. 2 Chit. Com. Law. 16.

PETIT, sometimes corrupted into petty. A French word signifying little, small. It is frequently used, as petit larceny, petit jury, petit treason.

PETIT, TREASON, English law. The killing of a master by his servant; a hushand by his wife; a superior by a secular or religious man. In the United States this is like any other murder. See High, Treason; Treason.

PETITION. An instrument of writing or printing containing a prayer from the person presenting it, called the petitioner, to the body or person to whom it is presented, for the redress of some wrong, or the grant of some favor, which the latter has the right to give.

2. By the constitution of the United States the right "to petition the government for a redress of grievances," is secured to the people. Amendm. Art. 1.

3. Petitions are frequently presented to the courts in order to bring some matters before them. It is a general rule, in such cases, that an affidavit should be made that the facts therein contained are true as far as known to the petitioner, and that those facts which he states as knowing from others be believes to be true.

PETITION OF RIGHT, Eng. law. When the crown is in possession, or any title is vested in it which is claimed by a subject, as no suit can be brought against the king, the subject is allowed to file in chancery a petition of right to the king.

2. This is in the, nature of an action against a subject, in which the petitioner sets out his right to tbat which is demanded by him, and prays the king to do him right and justice; and, upon a due and lawful trial of the right, to make him restitution. It is called a petition of right, because the king is bound of right to answer it, and let the matter therein contained be determined in a legal way, in like manner as causes between subject and subject. The petition is presented to the king, who subscribes it, with these words, soit droit fait al partie, and thereupon it is delivered to the chancellor to be executed according to law. Coke’s Entr. 419, 422 b; Mitf. Eq. Pl. 30, 31; Coop. Eq. Pl. 22, 23.

PETITORY. That which demands or petitions that which has, the, quality of a prayer or petition; a right to demand.

2. A petitory suit or action is understood to be one in which the mere title to property is to be enforced by means of a demand or petition, as distin−guished from a possessory suit. 1 Kent, Com. 371.

3. In the Scotch law, petitory actions are so called, not because something is sought to be awarded by the judge, for in that sense all actions must be petitory, but because some demand is made upon the defender, in consequence either of the right of property or credit in the pursuer. Thus, actions for restitution of movables, actions of pounding, of forthcoming, and indeed all personal actions upon contracts, or quasi contracts, which the Romans called condictiones, are petitory. Ersk. Inst. b. 4, t. 1, n. 47.

PETTY AVERAGE. A contribution by the owners of the ship, freight and goods on board, for losses sustained by the ship and cargo, which consist of small charges. Vide Average.

PETTY BAG, Engl. law. An office in the court of chancery, appropriated for suits against attorneys and officers of the court; and for, process and proceedings, by extent on statutes, recognizances, ad quod damnum and the like. T. de la Ley.

PETTIFOGGER. One who pretends to be a lawyer, but possessing neither knowledge, law, nor conscience.

PEW. A seat in a church separated from all others, with a convenient space to stand therein.

2. It is an incorporeal interest in the real property. And, although a man has the exclusive right to it, yet, it seems, he cannot maintain trespass against a person entering it; 1 T. R. 430; but case is the proper remedy. 3 B. & Ald. 361; 8 B. & C. 294; S. C. 15 Eng. C. L. R. 221.

3. The right to pews is limited and usufructuary, and does not interfere with the right of the parish or congregation to pull down and rebuild the church. 4 Ohio R 541; 5 Cowen’s R. 496; 17 Mass. R. 435; 1 Pick. R. 102; 3 Pick. R. 344; 6 S. & R. 508; 9 Wheat. R. 445; 9 Cranch, R. 52; 6 John. R. 41; 4 Johns. Ch. R. 596; 6 T. R.

396. Vide Pow. Mortgages, Index, h. t.; 2 Bl. Com. 429; 1 Chit. Pr. 208, 210; 1 Pow. Mort. 17 n.

4. In Connecticut and Maine, and in Massachusetts, (except in Boston), pews are considered real estate: in Boston they are personal chattels. In New Hampshire they are personal property. 1 Smith's St. 145. The precise nature of such property does not appear to be well settled in New York. 15 Wend. R. 218; 16 Wend. R. 28; 5 Cowen's R. 494. See Rev. St. Mass. 413; Conn. L. 432; 10 Mass. R. 323 17 Mass. 438; 7 Pick. R. 138; 4 N. H. Rep. 180; 4 Ohio R. 515; 4 Harr. & McHen. 279; Harr. Dig. Ecclesiastical Law. Vide Perturbation of seat; Best on Pres. 111; Crabb on R. P. _481 to 497.

PHAROS. A light−house or beacon. It is derived from Phams, a small island at the mouth of the Nile, on which was built a watch−tower.

PHYSICIAN. One lawfully engaged in the practice of medicine.

2. A physician in England cannot recover for fees, as his practice is altogether honorary. Peake C. N. P. 96, 123; 4 T. R. 317.

3. But in Pennsylvania, and perhaps in all the United States, he may recover for his services. 5 Serg. & Rawle, 416. The law implies, therefore, a contract on the part of a medical man, as well as those of other professions, to discharge their duty in a skillful and attentive manner; and the law will redress the party injured by their neglect or ignorance. 1 Saund. 312, R; 1 Ld. Raym. 213; 2 Wils. 359; 8 East, 348.

4. They are sometimes answerable criminally for mala praxis. (q. v.) 2 Russ. on Cr. 288; Ayl. Pand. 213; Com. Dig. h. t. Vin. Ab. h. t.

PHYSIOLOGY, med. jur. The science which treats of the functions of animals; it is the science of life.

2. The legal practitioner who expects to rise to eminence, must acquire some acquaintance with physiology. This subject is intimately connected with gestation, birth, life and death. Vide 2 Chit. Pr. 42, n.

PIGNORATION, civil law . This word is used by Justinian in the title of the 52d novel, and signifies not only a pledge of property, but an engagement of the person.

PICKPOCKET. A thief; one who in a crowd or. in other places, steals from the pockets or person of another without putting him in fear. This is generally punished as simple larceny.

PIGNORATIVE CONTRACT, civ. law. A contract by which the owner of an estate engages it to another for a sum of money, and grants to him and his successors the right to enjoy it, until he shall be reimbursed, voluntarily, that sum of money. Poth. h. t.

PIGNORIS CAPIO, ROM. civil law. The name given to one of the legis actiones of the Roman law. It consisted chiefly in the taking. of a pledge, and was in fact a mode of execution. It was confined to special cases determined by positive law or by custom, such as taxes, duties, rents, &c., and is comparable in some respects to distresses at common law. The proceeding took place in the presence of a praetor.

PIGNUS, civil law. This word signifies in English, pledge or pawn. (q. v.) It is derived, says Gaius, from pugnium, the fist, because what is delivered in pledge is delivered. in hand. Dig. 50, 16, 238, 2. This is one of several instances of the failure of the Roman jurists, when they attempted etymological explanation of words. The elements of pignus (pig) is contained in the word pa(n)g−o, and its cognate forms. Smith's Dict. Gr. and Rom. Antiq. h. v.

PILLAGE. The taking by violence of private property by a victorious army from the citizens or subjects of the enenly. This, in modern times, is seldom allowed, and then, only when authorized by the commander or chief officer, at the place where the pillage is committed. The property thus violently taken in general belongs to the common soldiers. See Dall. Dict. Propriete, art. 3, _5; Wolff, _1201; and Booty; Prize.

PILLORY, punishment. wooden machine in which the neck of the culprit is inserted.

2. This punishment has been superseded by the adoption of the penitentiary system in most of the states. Vide 1 Chit. Cr. Law, 797. The punishment of standing in the pillory, so far as the same was provided by the laws of the United States, was abolished by the act of congress of February 27, 1839, s. 5. See Baxr. on the Stat. 48, note.

PILOT, mer. law. This word has two meanings. It signifies, first, an officer serving on board of a ship during the course of a voyage, and having the charge of the helm and of the ship's route; and, secondly, an officer authorized by law, who is taken on board at a particular place, for the purpose of conducting a ship through a river, road or channel, or from or into port.

2. Pilots of the second description are established by legislative enactments at the principal seaports in this country, and have rights, and are bound to perform duties, agreeably to the provisions of the several laws establishing them.

3. Pilots have been established in all maritime countries. After due trial and experience of their qualifications, they are licensed to offer themselves as guides in difficult navigation; and they are usually, on the other hand, bound to obey the call of a ship−master to exercise their functions. Abbott on Ship. 180; 1 John R. 305; 4 Dall. 205; 2 New R. 82; 5 Rob. Adm. Rep. 308; 6 Rob. Adm. R. 316; Laws of Oler. art. 23; Molloy, B. 2, c. 9, s. 3 and 7; Wesk. Ins. 395; Act of Congress of 7th August, 1789, s. 4; Merl. Repert. h. t.; Pardessus, n. 637.

PILOTAGE, contracts. The compensation given to a pilot for conducting a vessel in or out of port. Poth. Des Avaries, n. 147.

2. Pilotage is a lien on the ship, when the contract has been made by the master or quasi master of the ship, or some other person lawfully authorized to make it; 1 Mason, R. 508; and the admiralty court has jurisdiction, when services have been performed at sea. Id.; 10 Wheat. 428; 6 Pet. 682; 10 Pet. 108; and see 1 Pet. Adm. Dec. 227.

PIN MONEY. Money allowed by a man to his wife to spend for her own personal comforts.

2. When pin money is given to, but not spent by the wife, on his death it belongs to his estate. 4 Vin. Ab. 133, tit'. Baron and Feme, E a. 8; 2 Eq. Cas. Ab. 156; 2 P. Wms. 341; 3 P. Wms. 353; 1 Ves. 267; 2 Ves. 190; 1 Madd. Ch. 489, 490.

3. In the French law the term Epingles, pins, is used to designate the present which is sometimes given by the purchaser of an immovable to the wife or daughters of the seller to induce them to consent to the sale. This present is not considered as a part of the consideration, but a purely voluntary gift. Diet. de Jur. mot Epingles.

4. In England it was once adjudged that a promise to a wife, by the purchaser, that if she would not hinder the bargain for the sale of the hushand's lands, he would give her ten pounds, was valid, and might be enforeed by an action of assumpsit, instituted by hushand and wife. Roll. Ab. 21, 22.

5. It has been conjectured that the term pin money, has been applied to signify the provision for a married woman, because anciently there was a tax laid for providing the English queen with pins. Barringt. on the Stat. 181.

PINT. A liquid measure containing half a quart or the eighth part of a gallon.

PIPE, Eng. laid. The name of a roll in the exchequer otherwise called the Great Roll. A measure containing two hogsheads; one hundred and twenty−six gallons is also called a pipe.

PIRACY, crim. law. A robbery or forcible depreciation on the high seas, without lawful authority, done animo furandi, in the spirit and intention of universal hostility. 5 Wheat. 153, 163; 3 Wheat. 610; 3 Wash. C. C. R. 209. This is the definition of this offence by the law of nations. 1 Kent, Com. 183. The word is derived from peira deceptio, deceit or deception: or from peiron wandering up and down, and resting in no place, but coasting hither and thither to do mischief. Ridley's View, Part 2, c. 1, s. 3.

2. Congress may define and punish piracies and felonies on the high seas, and offences against the law of nations. Const. U. S. Art. 1, s. 7, n. 10; 5 Wheat. 184, 153, 76; 3 Wheat. 336. In pursuance of the authority thus given by the constitution, it was declared by the act of congress of April 30, 1790, s. 8, 1 Story's Laws U. S. 84, that murder or robbery committed on the high seas, or in any river, haven, or bay, out of the jurisdiction of any particular state, or any offence, which, if committed within the body of a county, would, by the laws of the United States, be punishable with death, should be adjudged to be piracy and felony, and punishable with death. It was further declared, that if any captain or manner should piratically and feloniously run away with a vessel, or any goods or merchandise of the value of fifty dollars; or should yield up such vessel voluntarily to pirates; or if any seaman should forcible endeavor to hinder his commander from defending the ship or goods committed to his trust, or should make revolt in the ship; every such offender should be adjudged a pirate and felon, and be punishable with death. Accessaries before the fact are punishable as the principal; those after the fact with fine and imprisonment.

3. By a subsequent act, passed March 3, 1819, 3 Story, 1739, made perpetual by the act of May 15, 1820, 1 Story, 1798, congress declared, that if any person upon the high seas, should commit the crime of piracy as defined by the law of nations, he should, on conviction, suffer death.

4. And again by the act of May 15, 1820, s. 3, 1 Story, 1798, congress declared that if any person should, upon the high seas, or in any open roadstead, or in any haven, basin or bay, or in any river where the sea ebbs and flows, commit the crime of robbery in or upon any ship or vessel, or upon any of the ship's company of any ship or vessel, or the lading thereof, such person should be adjudged to be a pirate, and suffer death. And if any person engaged in any piratical cruise or enterprize, or being of the crew or ship's company of any piratical ship or vessel, should land from such ship or vessel, and, on shore; should commit robbery, such person should be

adjudged a pirate and suffer death. Provided that the state in which the offence may have been committed should not be deprived of its jurisdiction over the same, when committed within the body of a county, and that the courts of the United States should have no jurisdiction to try such offenders, after conviction or acquittal, for the same offence, in a state court. The 4th and 5th sections of the last mentioned act declare persons engaged in the slave trade, or in forcibly detaining a free negro or mulatto and carrying him in any ship or vessel into slavery, piracy, punishable with death. Vide 1 Kent, Com. 183; Beaussant, Code Maritime, t. 1, p. 244; Dalloz, Diet. Supp. h. t.; Dougl. 613; Park's Ins. Index, h. t. Bac. Ab. h. t.; 16 Vin. Ab. 346; Ayl. Pand. 42 11 Wheat. R. 39; 1 Gall. R. 247; Id. 524 3 W. C. C. R. 209, 240; 1 Pet. C. C. R. 118, 121.

PIRACY, torts. By piracy is understood the plagiarisms of a book, engraving or other work, for which a copyright has been taken out.

2. When a piracy has been made of such a work, an injunction will be granted. 5 Ves. 709; 4 Ves. 681; 12 Ves. 270. Vide copyright.

PIRATE. A sea robber, who, to enrich himself by subtlety or open force, setteth upon merchants and others trading by sea, despoiling them of their loading, and sometimes bereaving them of life and, sinking their ships; Ridley's View of the Civ. and Ecc. Law, part 2, c. 1, s. 8; or more generally one guilty of the crime of piracy. Merl. Repert. h. t. See, for the etymology of this word, Bac. Ab. Piracy

PIRATlCALLY, pleadings. This is a technical word, essential to charge the crime of piracy in an indictment, which cannot be supplied by another word, or any circumlocution. Hawk. B. 1, c. 37, s. 15; 3 Inst. 112; 1 Chit. Cr. Law, *244.

PISCARY. The right of fishing in the waters of another. Bac. Ab. h. t.; 5 Com. Dig. 366. Vide Fishery.

PISTAREEN. A small Spanish coin. It is not a coin made current by the laws of the United States. 10 Pet. 618.

PIT, fossa. A hole dug in the earth, which was filled with water, and in which women thieves were drowned, instead of being hung. The punishment of the pit was formerly common in Scotland.

PLACE, pleading, evidence. A particular portion of space; locality.

2. In local actions, the plaintiff must lay his venue in the county in which the action arose. It is a general rule, that the place of every traversable fact, stated in the pleading, must be distinctly alleged; Com. Dig. Pleader, c. 20; Cro. Eliz. 78, 98; Lawes' Pl. 57; Bac. Ab. Venue, B; Co. Litt. 303 a; and some place must be alleged for every such fact; this is done by designating the city, town, village, parish or district, together with the county in which the fact is alleged to have occurred; and the place thus designated, is called the venue. (q. v.)

3. In transitory actions, the place laid in the declaration, need not be the place where the cause of action arose, unless when required by statute. In local actions, the plaintiff will be confined in his proof to the county laid in the declaration.

4. In criminal cases the facts must be laid and proved to have been committed within the jurisdiction of the court, or the defendant must be acquitted. 2 Hawk. c. 25, s. 84; Arcb. Cr. Pl. 40, 95. Vide, generally, Gould on Pl. c. 3, 102−104; Arcb. Civ. Pl. 366; Hamm. N. P. 462; 1 Saund. 347, n. 1; 2 Saund. 5 n.

PLACE OF BUSINESS. The place where a man usually transacts his affairs or business. When a man keeps a store, shop, counting room or office, independently and distinctly from all other persons, that is deemed his place of business 3 and when he usually transacts his business at the counting house, office, and the like, occupied and used by another, that will also be considered his place of business, if he has no independent place of his own. But when he has no particular right to use a place for such private purpose, as in an insurance office, in exchange room, banking room, a post office, and the like, where persons generally resort, these will not be considered as the party's place of business, although he may occasionally or transiently transact business there. 2 Pet. R. 121; 10 John. 501; 11 John. 231; 1 Pet. S. C. R. 582; 16 Pick. 392.

2. It is a general rule that a notice of the non−acceptance or non−payment of a bill, or of the non−payment of a note, may be sent either to the domicil or place of business of the person to be affected by such notice, and the fact that one is in one town and the other in the other will make no difference, and the holder has his election to send to either. A notice to partners may be left at the place of business of the firm or of any one of the partners. Story on Pr. Notes, _312.

PLACITUM. A plea. This word is nomen generalissimum, and refers to all the pleas in the case. 1 Saund. 388, n. 6; Skinn. 554; S. C. earth. 834; Yelv. 65. By placitum is also understood the subdivisions in abridgments and other works, where the point decided in a case is set down, separately, and generally numbered. In citing, it is abbreviated as follows: Vin. Ab. Abatement, pl. 3.

2. Placita, is the style of the English courts at the beginning of the record of Nisi Prius; in this sense, placita are divided into pleas of the crown, and common pleas.

3. The word is used by continental writers to signify jurisdictions, judgments, or assemblies for discussing causes. It occurs frequently in the laws of tae Longobards, in which there is a title de his qui ad, placitum venire coguntur. The word, it has been suggested, is derived from the German platz, which signifies the same as area facta. See Const. Car. Mag. Cap. IX. Hine−mar's Epist. 227 and 197. The common formula in most of the capitularies is "Placuit atque convenit inter Francos et corum proceres," and hence, says Dupin, the laws themselves are often called placita. Dupin, Notions sur le Droit, p. 73.

PLAGIARISM. The act of appropriating the ideas and language of another, and passing them for one's own.

2. When this amounts to piracy the party who has been guilty of it will be enjoined, when the original author has a copyright. Vide Copyright; Piracy; Quotation; Pard. Dr. Com. n. 169.

PLAGIARIUS, civil law. He who fraudulently concealed a freeman or slave who belonged to another.

2. The offence itself was called plagium.

3. It differed from larceny or theft in this, that larceny always implies that the guilty party intended to make a profit, whereas the plagiarius did not intend to make any profit. Dig. 48, 15, 6; Code, 9, 20, 9 and 15.

PLAGIUM. Man stealing, kidnapping. This offence is the crimen plagii of the Romans. Alis. Pr. Cr. Law, 280, 281.

PLAINT, Eng. law. The exhibiting of any action, real or personal, in writing; the party making his plaint is called the plaintiff.

PLAINTIFF, practice. He who, in a personal action, seeks a remedy for an injury to his rights. Ham. on Parties, h. t.; 1 Chit. Pl. Index, h. t.; Chit. Pr. Index, h. t.; 1 Com. Dig. 36, 205, 308.

2. Plaintiffs are legal or equitable. The legal plaintiff is he in whom the legal title or cause of action is vested. The equitable plaintiff is he who, not having the legal title, yet, is in equity entitled to the thing sued for; for example, when a suit is brought by Benjamin Franklin for the use of Robert Morris, Benjamin Franklin is the legal, and Robert Morris the equitable plaintiff. This is the usual manner of bringing suit, when the cause of action is not assignable at law, but is so in equity. Vide Bouv. Inst. Index, h. t.; Parties to Actions.

PLAINTIFF IN ERROR. A party who sues out a writ of error, and this whether in the court below he was plaintiff or defendant.

PLAN. The delineation or design of a city, a house or houses, a garden, a vessel, &c. traced on paper or other substance, representing the position, and the relative proportions of the different parts.

2. When houses are built by one person agreeably to a plan, and one of them is Sold to a person, with windows and doors in it, the owner of the others cannot shut up those windows, nor has his grantee any greater right. 1 Price, R. 27; 2 Ry. & Mo. 24; 1 Lev. 122; 2 Saund. 114, n. 4 1 M. & M. 396; 9 Bing 305; 1 Leigh's N. P. 559. See 12 Mass: 159; Hamm. N. P. 202; 2 Hill. Ab. c. 12, n. 6 to 12; Com. Dig. Action on the case for a nuisance, A. See Ancients Lights; Windows.

PLANTATIONS. Colonies, (q. v.) dependencies. (q. v.) 1 Bl. Com. 107. In England, this word, as it is used in St. 12, II. c. 18, is never applied to, any of the British dominions in Europe, but only to the colonies in the West Indies and America. 1 Marsh. Ins, B. 1, c. 3, _2, page 64.

2. By plan tation is also meant a farm.

PLAT. A map of a piece of land, in which are marked the courses and disstances of the different lines, and the quantity of land it contains.

2. Such a plat;nay be given in evidence in ascertaining the position of the land, and what is included, and may serve to settle the figure of a survey, and correct mistakes. 5 Monr. 160. See 17 Mass. 211; 5 Greenl. 219; 7 Greenl, 61; 4 Wheat. 444; 14 Mass. 149.

PLEA, chancery practice. "A plea," says Lord Bacon, speaking of proceedings in courts of equity, "is a foreign matter to discharge or stay the suit." Ord. Chan. (ed. Beam.) p. 26. Lord Redesdale defines it to be " a special answer showing or relying upon one or more thisgs as a cause why the suit should be either dismissed, delayed or barred." Mitf. Tr. Ch. 177; see Coop. Eq. Pl. 223; Beames' Pl. Eq. 1. A plea is a special answer to a bill, and differs in this from an answer in the common form, as it demands the judgment of the court in the first instance, whether the matter urged by it does not debar the plaintiff from his title to that answer which the bill requires. 2 Sch. & Lef. 721.

2. Pleas are of three sorts: 1. To the jurisdiction of the court. 2. To the person of the plaintiff. 3. In bar of the

plaintiff's suit. Blake's Ch. Pr. 112. See, generally, Beames' Elem. of Pleas in Eq.; Mitf. Tr. Cha. oh. 2, s. 2, pt. 2; Coop. Eq. Pl. ch. 5; 2 Madd. Ch. Pr. 296 to 331; Blake's Ch. Pr. 112 to 114; Bouv. Inst. Index, h. t.

PLEA, practice. The defendant's answer by matter of fact, to the plaintiff's declaration.

2. It is distinguished from a demurrer, which opposes matter of law to the declaration. Steph. Pl. 62.

3. Pleas are divided into plea dilatory and peremptory; and this is the most general division to which they are subject.

4. Subordinate to this is another division; they are either to the jurisdiction of the court, in suspension of the action; in abatement of the writ; or, in bar of the action; the first three of which belong to the dilatory class, the last is of the peremptory kind. Steph. Pl. 63; 1 Chit. Pl. 425; Lawes, Pl. 36.

5. The law has prescribed and settled the order of pleading, which the defendant is to pursue, to wit; 1st. To the jurisdiction of the court. 2d. To the disability, &c. of the person. 1st. Of thepla'intiff. 2d. Of the defendant. 3d. To the count or declaration. 4th. To the writ. 1st. To the form of the writ; first, Matter apparent on the face of it, secondly, Matter dehors. 2d. To the action of the writ. 5th. To the action itself in bar.

6. This is said to be the natural order of pleading, because each subsequent, plea admits that there is no foundation for the former. Such is the English law. 1 Ch. Plead. 425. The rule is different with regard to the plea of jurisdiction in the courts of the United States and those of Pennsylvania. 1. Binn. 138; ld. 219; 2 Dall. 368; 3 Dall. 19; 10 S. & R. 229.

7. − 2. Plea, in its ancient sense, means suit or action, and it is sometimes still used in that sense; for example, A B was summoned to answer C D of a plea that he render, &c. Steph. Pl. 38, 39, u. 9; Warr. Law Studies, 272, note n.

8. − 3. This variable word, to plead, has still another and more popular use, importing forensic argument in a cause, but it is not so employed by the profession. Steph. Pl. App. note 1.

9. There are various sorts of pleas, the principal of which are given below.

10. Plea in abatement, is when, for any default, the defendant prays that the writ or plaint do abate, that is, cease against him for that time. Com. Dig. Abatement, B.

11. Hence it may be observed, 1st. That the defendant may plead in Abatement for faults apparent on the writ or plaint itself, or for such as are shown dehors, or out of the writ or plaint. 2d. That a plea in, abatement is never perpetual, but only a temporary plea, in form at least, and if the cause revived, the plaintiff may sue again.

12. If the defendant plead a plea in abatement, in his plea, he ought generally to give a better writ to the plaintiff, that is, show him what other and better writ can be adopted; Com. Dig. Abatement, I 1; but if the plea go to the matter and substance of the writ, &c., he need not give the plaintiff another writ. Nor need he do so when the plea avoids the whole cause of the action. Id. I 2.

13. Pleas in abatement are divided into those relating, first, to the disability of the plaintiff or defendant; secondly, to the count or declaration; thirdly, to the writ. 1 Chit. Pl. 435.

14. − 1. Plea in abatement to the person of the plaintiff. Pleas of this kind are either that the plaintiff is not in existence, being only a fictitious person, or dead; or else, that being in existence, he is under some disability to bring or maintain the action, as by being an alien enemy; Com. Dig. Abatement, E 4 Bac. Abr. Abatement, B 3; 1 Chit. Pl. 436; or the plaintiff is a married woman, and she sues alone. See 3 T. R. 631; 6 T. R. 265.

15. Plea in abatement to the person of the defendant. These pleas are coverture, and, in the English law, infancy, when the parol shall demur. When a feme covert is sued, and the objection is merely that the hushand ought to have been sued jointly with her; as when, since entering into the contract, or committing the tort, she has married; she must, when sued alone, plead her coverture in abatement, and aver that her hushand is living. 3 T. R. 627; 1 Chit. Pl. 437 , 8.

16. − 2. Plea in abatement to the count. Pleas of this kind are for some −uncertainty, repugnancy, or want of form, not appearing on the face of the writ itself, but apparent from the recital of it in the declaration only; or else for some variance between the writ and declaration. But it was always necessary to obtain oyer of the writ before the pleading of these pleas; and since oyer cannot now be had of the original writ for the purpose of pleading them, it seems that they can no longer be pleaded. See Oyer.

17. Plea in abatement to the form of the writ. Such pleas are for some apparent uncertainty, repugnancy, or want of form, variance from the record, specialty, &c., mentioned therein, or misnomer of the plaintiff or defendant. Lawes' Civ. Pl. 106; 1 Chit. Pl. 440.

18. Plea in abatement to the action of the writ. Pleas of this kind are pleaded when the action is misconceived, or

was prematurely commenced before the cause of action arose; or when there is another action depending for the same cause. Tidd's Pr. 579. But as these matters are ground for demurrer or nonsuit, it is now very unusual to plead them in abatement. See 2 Saund. 210, a.

19. Plea in avoidance, is one which confesses the matters contained in the declaration, and avoids the effect of them, by some new matter which shows that the plaintiff is not entitled to maintain his action. For example, the plea may admit the contract declared upon, and show that it was void or voidable, because of the inability of one of the parties to make it, on account of coverture, infancy, or the like. Lawes, Pl. 122.

20. Plea in bar, is one that denies that the plaintiff has any cause of action. 1 Ch. Pl. 459 Co. Litt. 303 b; 6 Co. 7. Or it is one which shows some ground for barring or defeating the action; and makes prayer to that effect, Steph. Pl. 70; Britton, 92. See Bar.

21. A plea in bar is, therefore, distinguished from all pleas of the dilatory class, as impugning the right of the action altogether, instead of merely tending to divert the proceedings to another jurisdiction, or suspend them, or abate the particular writ. It is in short a substantial and conclusive answer to the action. It follows, from this property, that in general, it must either deny all, or some essential part of the averments of fact in the declaration; or, admitting them to be true, allege new facts, which obviate and repel their legal effect. In the first case the defendant is said, in the language of pleading, to traverse the matter of the declaration; in the latter, to confess and avoid it. Pleas in bar are consequently divided into pleas by way of traverse, and pleas by way of confession and avoidance. Steph. Pl. 70, 71.

22. Pleas in bar are, also divided into general or special. General pleas in bar deny or take issue either upon the whole or part of the declaration, or contain some new matter which is relied upon by the defendant in his defence. Lawes Pl. 110.

23. Special pleas in bar a re very various, according to the circumstances of the defendant's case; as, in personal actions, the defendant may plead any special matter in denial, avoidance, discharge, excuse, or justification of the matter alleged in the declaration, which destroys or bars the plaintiff's action; or he may plead any matter which estops, or precludes him from averring or insisting on any matter relied upon by the plaintiff in his declaration. The latter sort of pleas are called pleas in estoppel. In real actions, the tenant may plead any matter which destroys and bars the demandant's title; as, a general release. Id. 115, 116.

24. The general qualities of a plea in bar are, 1. That it be adapted to the nature and form of the action, and also conformable to the count. Co. Litt. 303, a 285, b; Bac. Abr. Pleas, I; 1 Roll. Rep. 216.

2. That it answers all it assumes to answer, and no more. Co. Litt. 303 a; Com. Dig. Pleader, E 1, 36; 1 Saund. 28, n. 1, 2, 3; 2 Bos. & Pull. 427; 3 Bos. & Pull. 174.

3. In the case of a special plea, that it confess and admit the fact. 3 T. R. 298; 1 Salk. 394; Carth. 380; 1 Saund. 28, n. and 14 u. 3 10 Johns. R. 289.

4. That it be single. Co. Litt. 304; Bac. Ab. Pleas, 2 Saund. K, 1, 2; Com Dig. Plead. E 2; 49, 50; Plowd. Com. 140, d.

5. That it be certain. Com. Dig. Pleader, E 5, 7, 8, 9, 10, 11; C 41; this Dict. Certainty; Pleading.

6. It must be direct, positive, and not argumentative. See 6 Cranch, 126; 9 Johns. It. 313.

7. It must be capable of trial. 8. It must be true and capable of proof. See Plea, sham.

25. The parts of a plea in bar may be considered with reference to,

1. The title of the court in which it is pleaded.

2. The title of the term.

3. The names of the parties in the margin. These, however, do not constitute any part of the plea. The surnames only are usually inserted, and that of the defendant precedes the plaintiff's; as, " Roeats. Doe."

4. The commencement which includes the statement of, 1. The name of the defendant; 2. The appearance; 3. The defence; see Defence; 4. The actio non;
see dctio non.

5. The body, which may contain, 1. The inducement; 2. The protestation; 3. Ground of defence 4. Qua est eadem; 5. The traverse.

6. The conclusion.

26. Dilatory pleas are such as delay the plaintiff's remedy, by questioning, not the cause of action, but the propriety of the suit, or the mode in which the remedy is sought.

27. Dilatory pleas are divided by Sir William Blackstone, into three kinds: 1. Pleas to the jurisdiction of the

court; as, that the cause of action arose out of the limits of the jurisdiction of the court, when the action is local. 2. Pleas to the disability of the plaintiff, or, as they are usually termed, to' the person of the plaintiff; as, that he is an alien enemy. 3. Pleas in abatement of the writ, or count; these are founded upon some defect or mistake, either in the writ itself; as, that the defendant is misnamed in it, or the like; or in the mode in which the count pursues it; as, that there is some variance or repugnancy between the count and writ; in which case, the fault in the count furnishes a cause for abating the writ. 2 Bl. Com. 301 Com. Dig. Abatement, G 1, 8; Id. Pleader, C 14, 15; Bac. Ab. Pleas, F 7.

28. All dilatory pleas are sometimes called pleas in abatement, as contradistinguished to pleas to the action; this is perhaps not strictly proper, because, though all pleas in abatement are dilatory pleas, yet all dilatory pleas are not pleas in abatement. Gould on Pl. ch. 2, _35; vide 1 Chit. PI, ch. 6; Bac. Ab. Abatement, 0; 1 Mass 358; 1 John. Cas. 101. 2. A plea in discharge, as distinguish ed from a plea in avoidance, is one which admits the demand, and instead of avoiding the payment or satisfaction of it, shows that it has been discharged by some matter of fact. Such are pleas of payment, release, and the like.

30. A plea in excuse, is one which admits the demand or complaint stated in the declaration, but excuses the non−compliance of the plaintiff's claim, or the commission of the act of which he complains, on account of the defendant having done all in his power to satisfy the former, or not having teen the culpable author of the latter. A plea of tender is an example of the former, and a plea of son assault demesne, an instance of the latter.

31. A foreign plea is one which takes the cause out of the court where it is pleaded, by showing a want of jurisdiction in that court. 2 Lill. Pr. Beg. 374; Carth. 402. See the form of the plea in Lill. Ent. 475.

32. A plea of justification is one in which the defendant professes purpo sely to have done the acts which are the subject of the plaiutiff's suit, in order to exercise that right which he considers he might in point of law exercise, and in the exercise of which he conceives himself not merely excused, but justified.

33. A plea puis darrein continuance. Under the ancient law, there were continuances, i. e. adjournments of the proceedings for certain purposes, from one day or one term to another; and, in such cases, there was an entry made on the record, expressing the ground of the adjournment, and appointing the parties to reappear at a given day.

34. In the interval between such continuance and the day appointed, the parties were of course out of court, and consequently not in a situation to plead. But it sometimes happened, that after a plea had been pleaded, and while the parties were out of court, in consequence of such continuance, a new matter of defence arose, which did not exist, and which the defendant had consequently no opportunity to plead, before the last continuance. This new defence he was therefore entitled, at the day given for his reappearance, to plead as a matter that had happened after the last continuance, puis darrein continuance. In the same cases that occasioned a continuance in the ancient common Iaw, but in no other, a continuance shall take place. At the time indeed, when the pleadings are filed and delivered, no record exists, and there is, therefore, no entry at that time, made on the record, of the award of a continuance; but the parties are, from the day when, by the ancient practice, a continuance would have been entered, supposed to be out of court, and the pleading is suspended, till the day arrives to which, by the ancient, practice, the continuance would extend. At that day, the defendant is entitled, if any new matter of defence has arisen in the interval, to plead it according to the ancient plan, puis darrein continuance.

35. A plea puis darrein continuance is not a departure from, but is a waiver of the first plea, and is always headed by way of substitution for it, on which no proceeding is afterwards had. 1 Salk. 178; 2 Stran. 1195 Hob. 81; 4 Serg. & Rawle, 239. Great certainty is requisite in pleas of this description. Doct. Pl. 297; Yelv. 141; Cro. Jac. 261; Freem. 112; 2 Lutw. 1143; 2 Salk. 519; 2 Wils. 139; Co. Entr. 517 b. It is not sufficient to say generally that after the last continuance such a thing happened, but the day of the continuance must be shown, and also the time and place must be alleged where the matter of defence arose. Id. ibid.; Bull. N. P. 309.

36. Pleas puis darrein continuance are either in bar or abatement; Com. Dig. Abatement, I 24; and are followed, like other pleas, by a replication and other pleadings, till issue is attained upon them such pleas must be verified on oath before they are allowed. 2 Smith's R. 396; Freem. 352; 1 Strange, 493.

37. A sham plea is one which is known to the pleader to be false, and is entered for the purpose of delay. There are certain pleas of this kind, which, in consequence of their having been long and frequently used in practice, have obtained toleration from the courts; and, though discouraged, are tacitly allowed; as, for example, the common plea of judgment recovered, that is, that judgment has been already recovered by the plaintiff, for the same cause of action. Steph. on Pleading, 444, 445; 1 Chit. Pl. 505, 506.

38. Plea in suspension of the action. Such a plea is one which shows some ground for not proceeding in the suit

at the present period, and prays that the pleading may be stayed, until that ground be removed. The number of these pleas is small. Among them is that which is founded on the nonage of the parties, and termed parol demurrer. Stephen on Pleading, 64. See, generally, Bac. Abr. Pleas, Q; Com. Dig. Abatement, I 24, 34; Doct, Pl. 297; Bull. N. P. 309; Lawes Civ. Pl. 173; 1 Chit. Pl. 634,; Steph. Pl. 81; Bouv. Inst. Index, h. t.

TO PLEAD. The formal entry of the defendant's defence on the record. In a popular sense, it signifies the argument in a cause, but it is not so used by the profession. Steph. Pl. Appex. note I; Story, Eq. Pl. _5, note.

PLEADING, practice. The statement in a logical, and legal form, of the facts which constitute the plaintiff's cause of action, or the defendant's ground of defence; it is the formal mode of alleging that on the record, which would be the support, or the defence of the party in evidence. 8 T. R. 159; Dougl. 278; Com. Dig. Pleader, A; Bac. Abr. Pleas and Pleading; Cowp. 682−3. Or in the language of Lord Coke, good pleading consists in good matter pleaded in good form, in apt time, and due order. Co. Lit. 303. In a general sense, it is that which either party to a suit at law alleges for himself in a court, with respect to the subject−matter of the cause, and the mode in which it is carried on, including the demand which is made by the plaintiff; but in strictness, it is no more than setting forth those facts or arguments which show the justice or legal sufficiency of the plaintiff's demand, and the defendant's defence, without including the statement of the demand itself, which is contained in the declaration or count. Bac. Abr. Pleas and Pleading.

2. The science of pleading was designed only to render the facts of each party's case plain and intelligible, and to bring the matter in dispute between them to judgment. Steph. Pl. 1. It is, as has been well observed, admirably calculated for analyzing a cause, and extracting, like the roots of an equation, the true points in dispute; and referring them with all imaginable simplicity, to the court and jury. 1 Hale's C. L. 301, n

3. The parts of pleading have been considered as arrangeable under two heads; first, the regular, or those which occur, in the ordinary course of a suit; and secondly, the irregular, or collateral, being those which are occasioned by mistakes in the pleadings on either side.

4. The regular parts are, 1st. The declaration or count. 2d. The plea, which is either to the jurisdiction of the court, or suspending the action, a's in the case of a parol demurrer, or in abatement, or in bar of the action, or in replevin, an avowry or cognizance. 3d . The replication, and, in case of an evasive plea, a new assignment, or in replevin the plea in bar to the avowry or cognizance. 4th. The rejoinder, or, in replevin, the replication to the plea in bar. 5th. The sur−rejoinder, being in replevin, the rejoinder. 6th. The rebutter. 7th. The sur−rebutter. Vin. Abr. Pleas and Pleading, C; Bac. Abr. Pleas and Pleadings, A. 8th. Pleas puis darrein continuance, when the matter of defence arises pending the suit.

6. The irregular or collateral parts of Pleading are stated to be, 1st. Demurrers to Illly art of the pleadings above mentioned. 2dly. Demurrers to evidence given at trials. 3dly. Bills of exceptions. 4thly. Pleas in scire facias. And, 5thly. Pleas in error. Vin. Abr. Pleas and Pleadings, C.; Bouv. Inst. Index, h. t.

PLEADING, SPECIAL. By special pleading is meant the allegation of special or new matter, as distinguished from a direct denial of matter previously alleged on the opposite side. Gould on Pl. c. 1, s. 18.

PLEAS OF THE CROWN, Eng. law. This phrase is now employed to signify criminal causes in which the king is a party. Formerly it signified royal causes for offences of a greater magnitude than mere misdemeanors. These were left to be tried in the courts of the barons, whereas the greater offences, or royal causes, were to be tried in the king's courts, under the appellation of pleas of the crown. Robertson's Hist. of Charles V., vol. 1, p. 48.

PLEAS POLL, Engl. practice. A record which contains the declaration, plea, replication, rejoinder, and other pleadings, and the issue. Eunom. Dial. 2, _29, p. 111.

PLEBEIAN. One who is classed among the common people, as distinguished fromthe nobles. Happily in this country the order of nobles does not exist.

PLEBEIANS. One of the divisions of the people in ancient Rome; that class which was composed of those who were not nobles nor slaves. Vide Smith's Dic. Gr. & Rom. Antiq. art. Plebes.

PLEBISCIT, civil law. This is an anglicised word from the Latin plebiscitum, which is composed or derived from plebs and scire, and signifies, to establish or ordain.

2. A plebiscit was a law which the people, separated from the senators and the patricians, made on the requisition of one of their magistrates, that is, a tribune. Inst. 1, 2, 4.

PLEDGE or PAWN, contracts. These words seem indifferently used to convey the same idea. Story on Bailm. _286.

2. In the civil code of Louisiana, however, they appear not to have exactly the same meaning. It is there said that

pledges are of two kinds, namely, the pawn, and the antichresis. Louis'. Code, art. 3101.

3. Sir William Jones defines a pledge to be a bailment of goods by a debtor to his creditor, to be kept till the debt is discharged. Jones' Bailm. 117; Id. 36. Chancellor Kent, 2 Kent's Com. 449, follows the same definition, and see 1 Dane's Abr. c. 17, art. 4. Pothier, De Nantissement, art. prelim. 1, defines it to be a contract by which a debtor gives to his creditor a thing to detain as security for his debt. The code Napoleon has adopted this definition, Code Civ. art. 2071, and the Civil Code of Louisiana has followed it. Louis. Code, 3100. Lord Holt's definition is, when goods or chattels are delivered to another as a pawn, to be security for money borrowed of him by the bailor − and this, he adds, is called in Latin vadium, and in English, a pawn or pledge. Ld. Raym. 909, 913.

4. The foregoing definitions are sufficiently descriptive of the nature of a pawn or pledge but they are in terms limited to cues where a thing is given as a security for a debt; but a pawn may well be made as security for any other engagement. 2 Bulst. 306; Pothier, De Nantissement, n. 11. The definition of Domat is, therefore, more accurate, because it is more comprehensive, namely, that it is an appropriation of the thing given for the security of an engagement. Domat, B. 3, tit. 1, _1, n. 1. And, according to Judge Story, it may be defined to be a bailment of personal property, as security for some debt or engagement. Story on Bailm. _286.

5. The term pledge or pawn is confined to personal property; and where real or personal property is transferred by a conveyance of the title, as a security, it is commonly denominated a mortgage.

6. A mortgage of goods is, in the common law, distinguishable from a mere pawn. By a grant or a conveyance of goods in gage or mortgage, the whole legal title passes conditionally to the mortgagee; and if not redeemed at the time stipulated, the title becomes absolute at law, though equity will interfere to compel a redemption. But in a pledge a special property only passes to the pledges, the general property remaining in the pledger. 1 Atk. 167; 6 East, 25; 2 Caines' C. Err. 200; 1 Pick. 889; 1 Pet. S. C. B. 449 2 Pick. R. 610; 5 Pick. R. 60; 8. Pick. R. 236; 9 Greenl. R. 82; 2 N. H. Rep. 13; 5 N. H. Rep. 545; 5 John. R. 258; 8 John. R. 97; 10 John. R. 471; 2 Hall, R. 63; 6 Mass. R. 425; 15 Mass. R. 480. A mortgage may be without possession, but a pledge cannot be without possession. 5 Pick. 59, 60; and see 2 Pick. 607.

7. Things which are the subject of pledge or pawn are ordinarily goods and chattels; but money, negotiable instruments, choses in action, and indeed any other valuable thing of a personal nature, such as patent−rights and manuscripts, may, by the common law, be delivered in pledge. 10 Johns. R. 471, 475; 12 Johns. R. 146; 10 Jonhs. R. 389; 2 Blackf. R. 198; 7 Greenl. R. 28; 2 Taunt. R. 268; 13 Mass. 105; 15 Mass. 389; Id. 534; 2 Caines' C. Err. 200; 1 Dane's Abr. ch. 17, art. 4, _ ii. See Louis. Code, art. 3121.

8. It is of the essence of the contract, that there should be an actual delivery of the thing. 6 Mass. 422; 15 Mass. 477 14 Mass. 352; 2 Caines' C. Err. 200; 2 Kent's Com. 452; Bac. Abr. Bailment, B; 2 Rolle R. 439; 6 Pick. R. 59, 60; Pothier, De Nantissement, n. 8, 9; Louis. Code, 3129. What will amount to a delivery, is matter of law. See Delivery.

9. It is essential that the thing should be delivered as a security for some debt or engagement. Story on Bailm. _300. And see 3 Cranch, 73; 7 Cranch, 34; 2 John. Ch. R. 309; 1 Atk. 236; Prec. in Ch. 419; 2 Vern. 691; Gilb. Eq. R. 104; 6 Mass. 339; Pothier, Nantissement, n. 12; Civ. Code of Lo. art. 3119; Code Civ. art. 2076.

10. In virtue of the pawn the pawnee acquires, by the common law, a special property in the thing, and is entitied to the possession of it exclusively, during the time and for the objects for which it is pledged. 2 Bl. Com. 396; Jones' Bailm. 80; Owen R. 123, 124; 1 Bulst. 29; Yelv. 178 Cro. Jac. 244; 2 Ld. Raym. 909, 916; Bac. Abr. Bailment, B; 1 Dane's Abr. ch. 17, art. 4, SSSS 1, 6; Code Civ. art. 2082; Civ. Code of Lo. art. 3131. And he has a right to sell the pledge, when there has been a default in the pledger in complying with his engagement. Such a default does not divest the general property of the pawner, but still leaves him a right of redemption. But if the, pledge is not redeemed within the stipulated time, by a due performance of the contract for which it is a security, the pawnee has then a right to sell it, in order to have his debt or indemnity. And if there is no stipulated time for the payment of the debt, but the pledge is for an indefinite period, the pawnee has a right, upon request, to a prompt fulfilment of the agreement; and if the pawner refuses to comply, the pawnee may, upon demand and notice to the pawner, require the pawn to be sold. 2 Kent's Com. 452; Story on Bailm. 308.

11. The pawnee is bound to use ordinary diligence in keeping the pawn, and consequently is liable for ordinary neglect in keeping it. Jones'−Bailm. 75; 2 Kent's Com. 451; 1 Dane's Abr. ch. 17, art. 12; 2 Ld. Raym, 909, 916; Domat B 1, tit. 1, _4, n. 1.

12. The pawner has the right of redemption. If the pledge is conveyed by way of mortgage, and thus passes the legal title, unless he redeems the pledge at a stipulated time, the title of the pledge becomes absolute at law; and

the pledger has no remedy at law, but only a remedy in equity to redeem. 2 Ves. Jr. 378; 2 Caines' C. Err. 200. If, however, the transaction is not a transfer of ownership, but a mere pledge, as the pledger has never parted with the general title, he may, at law, redeem, notwithstanding he has not strictly complied with the condition of his contract. Com. Dig. Mortgage, B; 1 Pow. on Mortg. by Coventry & Land. 401, and notes, ibid. See further, as to the pawner's right of redemption, Story on Bailm. __345 to 349.

13. By the act of pawning, the pawner enters into an implied agreement or warranty that he is the owner of the property pawned, and that he has a good right to pass the title. Story on Bailm. _354.

14. As to the manner of extinguishing the contract of pledge or mortgage of personal property, see Story on Bailm. 359 to 366.

PLEDGE, contracts. He who becomes security for another, and, in this sense, every one who becomes bail for another is a pledge. 4 Inst. 180 Com. Dig. B. See Pledges.

PLEDGER. The same as pawner. (q. v.)

PLEDGEE. The same as pawnee. (q. v.)

PLEDGES, pleading. It was anciently necessary to find pledges or sureties to prosecute a suit, and the names of the pledges were added at the foot of the declaration; but in the course of time it became unnecessary to find such pledges because the plaintiff was no longer liable to be amerced, pro falsa clamora, and the pledges were merely nominal persons, and now John Doe and Richard Roe are the universal pledges; but they may be omitted altogether; 1 Tidd's. Pr. 455; Arch. Civ. Pl. 171; or inserted at any time before judgment. 4 John. 190.

PLEGIIS ACQUIETANDIS, WRIT DE. The name of an ancient writ in the English law, which lies where a man becomes pledge or surety for another to pay

a certain sum of money at a certain day; after the day, if the debtor does not pay the debt, and the. surety be compelled to pay, he shall have this writ to compel the debtor to pay the same. F. N. B. 321.

PLENA PROBATIO. A term used in the civil law, to signify full proof, in contradistinction to semi−plena probatio, which is only a presumption. Code, 4, 19, 5, &c. 1 Greenl. Ev. _119.

PLENARTY, eccl. law. Signifies that a benefice is full. Vide Avoidance.

PLENARY. Full, complete.

2. In the courts of admiralty, and in the English ecclesiastical courts, causes or suits in respect of the different course of proceeding in each, are termed plenary or summary. Plenary, or full and formal suits, are those in which the proceedings must be full and formal: the term summary is applied to those causes where the proceedings are more succinct and less formal. Law's Oughton, 41; 2 Chit. Pr. 481.

PLENE ADMINISTRAVIT, pleading.

A plea in bar entered by an executor or administrator by which he affirms that he had not in his possession at the time of the commencement of the suit, nor has had at any time since any goods of the deceased to be administered; when the plaintiff replies that the defendant had goods, &c., in his possession at that time, and the parties join issue, the burden of the proof will be on the plaintiff. Vide 15 John. R. 323; 6 T. R. 10; 1 Barn. & Ald. 254; 11 Vin. Ab. 349; 12 Vin. Ab. 185; 2 Phil. Ev. 295; 3 Saund. (a) 315, n. 1; 6 Com. Dig. 311.

PLENE ADMINISTRAVIT PRAETERt. This is the usual plea of plene administravit, except that the defendant admits a certain amount of assets in his hands.

PLENE COMPUTAVIT, pleading. A plea in an action of account render, by which the defendant avers that he has fully accounted. Bac. Ab. Accompt, E. This plea does not admit the liability of the defendant to account. 15 S. & R. 153.

PLENIPOTENTIARY. Possessing full powers; as, a minister plenipotentiary, is one authorized fully to settle the matters connected with his mission, subject however to the ratification of the government by which he is authorized. Vide Minister.

PLENUM DOMINIUM. The unlimited right which the owner has to use his property as he deems proper, without accountability to any one.

PLOUGH−BOTE. An allowance made to a rural tenant, of wood sufficient for ploughs, harrows, carts, and other instruments of hushandry.

PLOUGH−LAND, old Eng. law. An uncertain quantity of land; but, according to some opinions, it contains one hundred and twenty acres. Co. Litt. 69 a.

TO PLUNDER. The capture of personal property on land by a public enemy, with a view of making it his own. The property so captured is called plunder. See Booty; Piize.

PLUNDERAGE, mar. law. The embezzlement of goods on board of a ship, is known by the name of plunderage.

2. The rule of the maritime law in such cases is, that the whole crew shall be responsible for the property thus embezzled, because there must be some negligence in finding out the depredator. Abbott on Ship. 457; 3 John. Rep. 17; 1 Pet. Adm. Dec. 243; 1 New Rep. 347; 1 Pet. Adm. Dec. 200, 239.

PLURAL. A term used in grammar, which signifies more than one.

2. Sometimes, however, it may be so expressed that it means only one, as, if a man were to devise to another all he was worth, if he, the testator, died without children, and he died leaving one child, the devise would not take effect. See Dig. 50, 16, 148; Id. 35, 1, 101, 1; Id. 3 1, 17, 4 Code, 6, 49, 6, 2; Shelf. on L 559, 589. See Singular.

PLURALITY, government. The greater number of votes given at an election; it is distinguished from a majority, (q. v.) which is a plurality of all the votes which might have been given; though in common parlance majority is used in the sense here given to plurality.

PLURIES, practice. A term by which a writ issued subsequently to an alias of the same kind, is denominated.

2. The pluries writ is made by adding after we command you, the words, " as often times we have commanded you." This is called the first pluries, the next is called the second pluries, &c.

POINDING, Scotch. law. That diligence, affecting movable subjects, by which their property is carried directly to, the creditor. Poinding is real or personal. Ersk. Pr. L. Scot. 3, 6, 11.

POINDING, PERSONAL, Scotch law. Poinding of the goods belonging to the debtor; and of those goods only.

2. It may have for its warrant either letters of horning, containing a clause for poinding, and then it is executed by messengers; or precepts of poinding, granted by sheriffs, commissaries, &c., which are executed by their proper officers. No cattle pertaining to the plough, nor instruments of tillage, can be poinded in the time of laboring or tilling the ground, unless where the debtor, has no other goods that may be poinded. Ersk. Pr. L. Soot. 3, 6, 11. See Distress, to which this process is somewhat similar.

POINDING, REAL, or poinding of the ground, Scotch law. Though it be properly a diligence, this is generally considered by lawyers as a species of real action, and is so called to distinguish it from personal poinding, which is founded merely on an obligation to pay.

2. Every debitum fundi, whether legal or conventional, is a foundation for this action. It is therefore competent to all creditors in debts which make a real burden on lands. As it proceeds on a, real right, it may be directed against all goods that can be found on the lands burdened but, 1. Goods brought upon the ground by strangers are not subject to this diligence. 2. Even the goods of a tenant cannot be poinded for more than his term's rent, Ersk. Pr. L. Scot. 4, 1, 3.

POINT, practice. A proposition or question arising in a case.

2. It is the duty of a judge to give an opinion on every point of law, properly arising out of the issue, which is propounded to him. Vide Resolution.

POINT RESERVED. A point or question of law which the court, not being fully satisfied how to decide, in the hurried trial of a cause, rules in favor of the party offering it, but subject to revision on a motion for a new trial. If, after argument, it be found to have been ruled correctly, the verdict is supported; if otherwise, it is set aside .

POINTS, construction. Marks in writing and in print, to denote the stops that ought to be made in reading, and to point out the sense.

2. Points are not usually put in legislative acts or in deeds: Eunom. Dial. 2, _33, p. 239; yet, in construing them, the courts must read them with such stops as will give effect to the whole. 4 T. R. 65.

3. The points are the comma, the semi−colon, the colon, the full point, the point of interrogation and exclamation. Barr. on the Stat. 294, note; vide Punctuation.

POISON, crim. law. Those substances which, when applied to the organs of the body, are capable of altering or destroying, in a majority of cases, some or all of the functions necessary to life, are called poisons. 3 Fodere, Traite de Med. Leg. 449; Guy, Med. Jur. 520.

2. When administered with a felonious intent of committing , murder, if. death ensues, it is murder the most detestable, because it can of all others, be least prevented by manhood or forethought. It is a deliberate act necessarily implying malice. 1 Russ. Cr. 429. For the signs which indicate poisoning, vide 2 Beck's Med. Jurisp. ch. 16, p. 236, et seq.; Cooper's Med. Jurisp. 47; Ryan's Med. Jurisp. ch. 15, p. 202, et seq.; Traill, Med. Jur. 109.

POLE. A measure of length, equal to five yards and a half. Vide Measure.

POLICE. That species of superintendence by magistrates which has principally for its object the maintenance of public tranquillity among the citizens. The officers who are appointed for this purpose are also called the police.

2. The word police has three significations, namely; 1. The first relates to the measures which are adopted to keep order, the, laws aud ordinances on cleanliness, health, the markets, &c. 2. The second has for its object to procure to the authorities the means of detecting even the smallest attempts to commit crime, in order that the guilty may be arrested before their plans are carried into execution, and delivered over to the justice of the country. 3. The third comprehends the laws, ordinances and other measures which require the citizens to exercise their rights in a particular form.

3. Police has also been divided into administrative police, which has for its object to maintain constantly public order in every part of the general administration; and into judiciary police, which is intended principally to prevent crimes by punishing the crim inals. Its object is to punish crimes which the administrative police has not been able to prevent.

POLICE JURY. In Louisiana this name is given. to certain officers who collectively exercise jurisdiction in certain cases of police as levying taxes, regulating roads,

POLICY OF INSURANCE, contracts. An instrument in writing by which the contract of insurance is effected and reduced into form.

2. The term policy of insurance, or as surance, as it is sometimes called, is derived from the Italian di olizza di assecurazione, or di securanza, or securta; and in that language signifies a tote or bill of security or indemnity.

3. The policy is always considered as being made upon an executed consideration, namely, the payment or security for the payment of the premium, and contains only the promise of the underwriters, without anything in nature of a counter promise on the part of the insured. The policy may be effected by the owner of the property insured, his broker or agent.

4. As to its form, the policy has been considered in courts of law as an absurd and incoherent instrument; 4 T. R. 210; but courts of justice have always construed it according to the intention of the parties, and so that the indemnity of the insured, dud the advancement of trade, which are ,the great objects of insurance, may be attained. It should contain, 1. The names of the parties. 2. The name of the vessel insured, in order to identify it; but to prevent the ill consequence that might result from a mistake in the name of the vessel or master, there are usually inserted in policies these words, " or by whatsoever name or names the same ship or the master thereof is, or shall be, named or called." 3. A Specification of the subject−matter, of the insurance, whether it be goods, ship, freight, respondentia or bottomry securities, or other things. Marsh. Ins. 315; 3 Mass. Rep. 476. 4. A description of the voyage, with the commencement and end of the risk. 5. A statement of the perils insured against. 6. A power in the insured to save goods in case of misfortune, without violating the policy. 7. The promise of the insurers, and an acknowledgment of their receipt of the premium. 8. The common memorandum. 9. The date and subscription.

5. Policies, with reference to the reality of the interest insured, are distinguished into interest and wager policies; with reference to the amount of interest, into open and valued.

6. An interest policy, is where the insured has a real, substantial, assignable interest in the thing insured; in which case only it is a contract of indemnity.

7. A wager policy, is a pretended insurance, founded on an ideal risk, where the insured has no interest in the thing insured, and can therefore sustain no loss, by the happening of any of the misfortunes insured against. These policies are strongly reprobated. 3 Kent, Com. 225.

8. An open policy, is where the amount of the interest of the insured is not fixed by the policy; but is left to be ascertained by the insured in case a loss shall happen.

9. A valued policy, is where a value has been set on the ship. or goods insured, and this value inserted in the policy in the nature of liquidated damages, to save the necessity of proving it in case of loss. Marsh. Ins. 287; and see Kent, Com. Lecture 48; Marsh. Ins. ch. 8; 16 Vin. Ab. 402; 1 Supp. to Ves. jr. 305; Park. Ins. 1, 14; Westcott, Ins. 400; Pardes. h. t.; Poth. h. t.; Boulay Paty, h. t.; Bouv. Inst. Index, h. t.

POLICY, PUBLIC. By public policy is meant that which the law encourages for the promotion of the public good.

2. That which is against public policy is generally unlawful. For example, to restrain an individual from marrying, or from engaging in business, when the restraint is general, in the first case, to all persons, and, in the second, to all trades, business, or occupations. But if the restraint be only partial, as that Titius shall not marry Moevia, or that Caius shall not engage in a particular trade in a particular town or, place, the restraint is not against public policy,, and therefore valid. 1 Story, Eq. Jur. _274. See Newl. Contr. 472.

POLITICAL. Pertaining to policy, or the administration of the government. Political rights are those which may

be exercised in the formation or administration of the government they are distinguished from civil, rights, which are the rights which a man enjoys, as regards other individuals, and not in relation to the government. A political corporation is one which has principally for its object the administration of the government, or to which the powers of government, or a part of such powers, have been delegated. 1 Bouv. Inst. n. 182, 197, 198.

POLL. A head. Hence poll tax is the name of a tax imposed upon the people at so much a head. 2. To poll a jury is to require that each juror shall himself declare what is his verdict. This may be done at the instance of either party, at any time before the verdict is recorded. 3 Cowen, R. 23. See 18 John. R. 188. See Deed Poll.

POLLICITATION, civil law. A pollicitation is a promise not yet accepted by the person to whom it is made; it differs from a contract inasmuch as the latter includes a concurrence of intention in two parties, one of whom promises something to the other, who accepts on his part of such promise. L. 3, ff. Pollicit.; Grotius, lib. 2, c. 2; Poth. on Oblig. P. 1, c. 1, s. 1, art. 1,_2.

2. An offer to guaranty, but not accepted, is not a contract on which an action will lie. 1 Stark. C. 10; 1 M. & S. 557; 3 B. & C. 668, 690; 5 D. & R. 512, 586; 7 Cranch, 69; 17 John. R. 134; 1 Mason's R. 323, 371; 16 John. R. 67; 3 Conn. R. 438; 1 Pick. R. 282, 3; 1 B. & A. 681.

POLLS. The place where electors cast in their votes.

POLYANDRY. The state of a woman who has several hushands.

2. Polyandry is legalized only in Tibet. This is inconsistent with the law of nature. Vide Law of Nature.

POLYGARCHY. A term used to express a government which is shared by several persons; as, when two brothers succeed to the throne, and reign jointly.

POLYGAMY, crim. law. The act of a person who, knowing he has two or more wives, or she has two or more hushands living, marries another. It differs from bigamy. (q. v.) Com. Dig. Justices, S 5, Dict. de Jur. h. t.

POND. A body of stagnant water; a pool.

2. Any one has a right to erect a fish pond; the fish in ii are considered as real estate, and pass to the heir and not to the executor. Ow. 20. See Pool; River; Water.

PONE, English practice. An original writ issuing out of chancery, for the purpose of removing a plaint from an inferior court into the superior courts at Westminster. The word signifies "put;" put by gages, &c. The writ is called from the words it contained when in Latin, "Pone per vadium et salvos plegios," &c. Put by gage and safe pledges, &c. See F. N. B. 69, 70 a; Wilkinson on Replevin, Index.

PONTAGE. A contribution towards the maintenance, rebuilding or repairs of a bridge. The toll taken for this purpose also bears this name. Obsolete.

POOL. A small lake of standing water.

2. By the grant of a pool, it is said, both the land and water will pass. Co. Litt. 5. Vide Stagnum; Water. Undoubtedly the right to fish, and probably the right to use hydraulic works, will be acquired by such grant. 2 N. Hamps. Rep. 259; An on Wat. Courses, 47; Plowd. 161; Vaugh. 103; Bac. Ab. Grants, H 3; Com. Dig. Grant, E 5; 5 Cowen, 216; Cro. Jac. 150; 1 Lev. 44; Co. Litt. 5.

POPE. The chief of the catholic religion is so called. He is a temporal prince. He is elected by certain officers called cardinals, and remains in power during life. In the 9th Collation of the Authentics it is declared the bishop of Rome hath the first place of sitting in all assemblies, and the bishop of Constantinople the second. Ridley's View, part 1, chap. 3, sect. 10.

2. The pope has no political authority in the United States.

POPE'S FOLLY. The name of a small island, situated in the bay of Passama quoddy, which, it has been decided, is within the jurisdiction of the United States. 1 Ware's R. 26.

POPULAR ACTION, punishment. An action given by statute to any one who will sue for the penalty. A qui tam action. Dig. 47, 23, 1.

PORT. A place to which the officers of the customs are appropriated, and which include the privileges and guidance of all members and creeks which are allotted to them. 1 Chit. Com. Law, 726; Postlewaith's Com. Dict. h. t.; 1 Chit. Com. L. Index, h. t. According to Dalloz, a port is a place within land, protected against the waves and winds, and affording to vessels a place of safety. Diet. Supp. h. t. By the Roman law a port is defined to be locus, conclusus, quo importantur merces, et unde exportantur. Dig. 50,16, 59. See 7 N. S. 81. 2. A port differs from a haven, (q. v.) and includes something more. 1st. It is a place at which vessels may arrive and discharge, or take in their cargoes. 2. It comprehends a vale, city or borough, called in Latin caput corpus, for the reception of mariners and merchants, for securing the goods, and bringing them to market, and for victualling the ships. 3. It is

impressed with its legal character by the civil authority. Hale de Portibus Mar. c. 2; 1 Harg. 46, 73; Bac. Ab. Prerogative, D 5; Com. Dig. Navigation, E; 4 Inst. 148; Callis on Sewers, 56; 2 Chit. Com. Law, 2; Dig. 60, 16, 59; Id. 43, 12, 1, 13; Id. 47, 10, 15, 7; Id. 39, 4, 15.

PORT−REEVE, Eng. law. In some places in England an officer bearing this name is the chief magistrate of a port−town. Jacob's Dict. h. t.

PORT TOLL, Mer. law., By this phrase is understood the money paid for the privilege of bringing goods into a port.

PORTATICA, Engl. law. The generic name for port duties charged to ships. Harg. L. Tr. 74.

PORTER. The name of an ancient English officer who bore or carried a rod before the justices. The door−keeper of the English parliament also bears this name.

2. One who is employed as a common carrier to carry goods from one place to another in the same town, is also called a porter. Such person is in general answerable as a common carrier. Story, Bailm. _496.

PORTION. That part of a parent's estate, or the estate of one standing in loco parentis, which is given to a child. 1 Vern. 204. Vide 8 Com. Dig. 539; 16 Vin. Ab. 4321; 1 Supp. to Ves. Jr. 34, 58, 303, 308; 2 Id. 46, 370, 404.

PORTORIA, civil law. Duties paid in ports on merchandise. Code, 4, 61, 3.

PORTSALES. Auctions were anciently so called, because they took place in ports.

POSITIVE. Express; absolute; not doubtful. This word is frequently used in composition.

2. A positive condition is where the thing which is the subject of it must happen; as, if I marry. It is opposed to a negative condition, which is where the thing which is the subject of it must not happen; as, if I do not marry.

3. A positive fraud is the intentional and successful employment of any cunning, deception or artifice, to circumvent, cheat, or deceive another. 1 Story, Eq. _186; Dig. 4, 3, 1, 2; Dig. 2, 14, 7, 9. It is cited in opposition to constructive fraud. (q. v.)

4. Positive evidence is that which, if believed, establishes the truth or falsehood of a fact in issue, and does not arise from any presumption. It is distinguished from circumstantial evidence. 3 Bouv. Inst. n. 3057.

POSSE. This word is used substantively to signify a possibility. For example, such a thing is in posse, that is, such a thing may possibly be; when the thing is in being, the phrase to express it is, in esse. (q. v.)

POSSE COMITATUS. These Latin words signify the power of the county.

2. The sheriff has authority by the common law, while acting under the authority of the writ of the United States, commonwealth or people, as the case may be, and for the purpose of preserving the public peace, to call to his aid the posse comitatus.

3. But with respect to writs which issue, in the first instance, to arrest in civil suits, the sheriff is not bound to take the posse comitatus to assist him in the execution of them: though he may, if he pleases, on forcible resistance to the execution of the process. 2 Inst. 193; 3 Inst. 161.

4. Having the authority to call in the assistance of all, it seems to follow, that he may equally require that of any individual; but to this general rule there are some exceptions; persons of infirm health, or who want understanding, minors under the age of fifteen years, women, and perhaps some others, it seems, cannot be required to assist the sheriff, and are therefore not considered as a part of the power of the county. Vin. Ab. Sheriff, B.

5. A refusal on the part of an individual lawfully called upon to −assist the officer in putting down a riot is indictable. 1 Carr. & Marsh. 314. In this case will be found the form of an indictment for this offence.

6. Although the sheriff is acting without authority, yet it would seem that any person who obeys his command, unless aware of that fact, will be protected.

7. Whether an individual not enjoined by the sheriff to lend his aid, would be protected in his interference, seems questionable. In a case where the defendant assisted sheriff's officers in executing a writ of replevin without their solicitation, the court held him justified in so doing. 2 Mod. 244. Vide Bac. Ab. Sheriff, N; Hamm. N. P. 63; 5 Whart. R. 437, 440.

POSSESSED. This word is applied to the right and enjoyment of a termor or a person having a term, who is said to be possessed, and not seized. Bac. Tr. 335; Poph. 76; Dy. 369.

POSSESSIO FRATRIS. The brother's possession. This is a technical phrase which is applied in the English law relating to descents. By the common law, the ancestor from whom the inheritance was taken by descent, must have had actual seisin of the lands, either by his own entry, or by the possession of his own, or his ancestor's lessee for years, or by being in the receipt of rent from the lessee of the freehold. But there are qualifications as to

this rule, one of which arises from the doctrine of possesio fratris. The possession of a tenant for years, guardian or brother, is equivalent to that of the party himself, and is termed in law possessio fratris. Litt. sect. 8 Co. Litt. 15 a; 3 Wils. 516 7 T. R. 386 2 Hill Ab. 206.

2. In Connecticut, Delaware, Georgia, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, and probably in other states, the real and personal estates of intestates are distributed among the heirs, without any reference or regard to the actual seisin of the ancestor. Reeve on Des. 377 to 379; 4 Mason's R. 467; 3 Day's R. 166; 2 Pet. R. 59. In Maryland, New Hampshire, North Carolina, and Vermont, the doctrine of possessio fratris, it seems, still exists. 2 Peters' Rep. 625; Reeve on Desc. 377; 4 Kent, Com. 384, 5.

POSSESSION, intern. law. By possession is meant a country which is held by no other title than mere conquest.

2. In this sense Possession differs from a dependency, which belongs rightfully to the country which has dominion over it; and from colony, which is a country settled by citizens or subjects of the mother country. 3 Wash. C. C. R. 286.

POSSESSION, property. The detention or enjoyment of a thing which a man holds or exercises by himself or by another who keeps or exercises it in his name. By the possession of a thing, we always conceive the condition, in which not only one's own dealing with the thing is physically possible, but every other person's dealing with it is capable of being excluded. Thus, the seaman possesses his ship, but not the water in which it moves, although he makes each subserve his purpose.

2. In order to complete a possession two things are required. 1st. That there be an occupancy, apprehension, (q. v.) or taking. 2dly. That the taking be with an intent to possess (animus possidendi), hence persons who have no legal wills, as children and idiots, cannot possess or acquire possession. Poth. h. It.; Etienne, h. t. See Mer. R. 358; Abbott on Shipp. 9, et seq. But an infant of sufficient understanding may lawfully acquire the possession of a thing.

3. Possession is natural or civil; natural, when a man detains a thing corporeal, as by occupying a house, cultivating grounds or retaining a movable in his custody; possession is civil, when a person ceases to reside in the house, or on the land which he occupied, or to detain the movable he possessed, but without intending to abandon the possession. See, as to possession of lands, 2 Bl. Com. 116; Hamm. Parties, 178; 1 McLean's R. 214, 265.

4. Possession is also actual or constructive; actual, when the thing is in the immediate occupancy of the party. 3 Dey. R. 34. Constructive, when a man claims to hold by virtue of some title, without having the actual Occupancy; as, when the owner of a lot of land, regularly laid out, is in possession of any part, he is considered constructively in possession of the whole. 11 Vern. R. 129. What removal of property or loss of possession will be sufficient to constitute larceny, vide 2 Chit. Cr. Law, 919; 19 Jurist, 14; Etienne, h. t. Civ. Code of Louis. 3391, et seq.

5. Possession, in the civil law, is divided into natural and civil. The same division is adopted by the Civil Code of Louisiana.

6. Natural possession is that by which a man detains a thing corporeal, as by occupying a house, cultivating ground, or retaining a movable in his possession. Natural possession is also defined to be the corporeal detention of a thing, which we possess as belonging to us, without any title to that possession, or with a title which is void. Civ. Code of Lo. art. 3391, 3393.

7. Possession is civil, when a person ceases to reside in a house or on the land which he occupied, or to detain the movable which he possessed, but without intending to abandon the possession. It is the detention of a thing, by virtue of a just title, and under the conviction of possessing as owner. Id. art. 3392, 3394.

8. Possession applies properly only to corporeal things, movables and immovables. The possession of incorporeal rights, such as servitudes and other rights of that nature, is only a quasi. possession, and is exercised by a species of possession of which these rights are susceptible. Id. art. 3395.

9. Possession may be enjoyed by the proprietor of the, thing, or by another for him; thus the proprietor of a house possesses it by his tenant or farmer.

10. To acquire possession of a property, two things are requisite. 1. The intention of possessing as owner. 2. The corporeal possession of the thing. Id. art. 3399.

11. Possession is lost with or without the consent of the possessor. It is lost with his consent, 1. When he transfers this possession to another with the intention to divest himself of it. 2. When he does some act, which manifests his intention of abandoning possession, as when a man throws into the street furniture or clothes, of which he no longer chooses to make use. Id. art. 3411. A possessor of an estate loses the possession against his

consent. 1. When another expels him from it, whether by force in driving him away, or by usurping possession during his absence, aud preventing him from reentering. 2. When the possessor of an estate allows it to be usurped, and held for a year, without, during that time, having done any act of possession, or interfered with the usurper's possession. Id. art. 3412.

12. As to the effects of the purchaser's taking possession, see Sugd. Vend. 8, 9; 3 P. Wms. 193; 1 Ves. Jr. 226; 12 Ves. Jr. 27; 11 Ves. Jr. 464. Vide, generally, 5 Harr. & John. 230, 263; 6 Har. & John. 336; 1 Har. & John. 18; 1 Greenl. R. 109; 2 Har. & McH. 60, 254, 260; 3 Bibb, R. 209 1 Har. & McH., 210; 4 Bibb, R. 412, 6 Cowen, R. 632; 9 Cowen, R. 241; 5 Wheat. R. 116, 124; Cowp. 217; Code Nap. art. 2228; Code of the Two Sicilies, art. 2134; Bavarian Code, B. 2, c. 4, n. 5; Prus. Code, art. 579; Domat, Lois Civ. liv. 3, t, 7, s. 1; Vin. Ab. h. t.; Wolff, Inst. _200, and the note in the French translation; 2 Greenl. Ev. _614, 615; Co. Litt. 57 a; Cro. El. 777; 5 Co. 13; 7 John. 1.

POSSESSOR. He who holds, detains or enjoys a thing, either by himself or his agent, which he claims as his own.

2. In general the possessor of personal chattels is presumed to be the owner; and in case of real estate he has a right to receive the profits, until a title adverse to his possession has been established, leaving him subject to an action for the mesne profits. (q. v.)

POSSESSORY ACTION, old Eng. law. A reall action in which the plaintiff called the demandant, sought to recover the possession of lands, tenements, and hereditaments. On account of the great nicety required in its management, and the introduction of more expeditious methods of trying titles by other actions, it has been laid aside. Finch's Laws, 257; 3 Bouv. Inst. n. 2640.

2. In Louisiana, by this term is understood an action by which one claims to be maintained in the possession of an immovable property, or of a right upon or growing out of it, when he has been disturbed: or to be reinstated to that possession, when he has been divested or evicted. Code of Practice, art. 6; 2 L. R. 227, 454.

POSSIBILITY. An uncertain thing which may happen; Lilly's Reg. h. t.; or it is a contingent interest in real or personal estate. 1 Mad. Ch. 549.

2. Possibilities are near as when an estate is limited to one after the death of another; or remote, as that one man shall be married to a woman, and then that she shall die, and he be married to another. 1 Fonb. Eq. 212, n. e; l6 Vin. Ab. h. t., p. 460; 2 Co. 51 a.

3. Possibilities are also divided into, 1. A possibility coupled with an interest. This may, of course, be sold, assigned, transmitted or devised; such a possibility occurs in executory devises, and in contingent, springing or executory uses.

4. − 2. A bare possibility, or hope of succession; this is the case of an heir apparent, during the life of his ancestor. It is evident that he has no right which he can assign, devise, or even, release.

5. − 3. A possibility' or mere contingent interest, as a devise to Paul if he survive Peter. Dane's Ab. c. 1, a 5, _2, and the cases there cited.

POST. After. When two or more alienations or descents have taken place between an original intruder ant or defendant in a writ of entry, the writ is said to be in the post, because it states that the tenant had not entry unless after the ouster of the original intruder. 3 Bl. Com. 182. See Entry, limit of.

POST DATE. To date an instrument a time after that on which it is made. Vide Date.

POST DIEM. After the day; as a plea of payment post diem, after the, day when the money became due. Com. Dig. Pleader, 2 W 29.

POST DISEISIN, Engl. law. The name of a writ which, lies for him who, having recovered lands and tenements by force of a novel disseisin, is again disseised by a former disseisor. Jacob.

POST ENTRY, maritime law. When a merchant makes an entry on the importation of, goods, and at the time he is not able to calculate exactly the duties which he is liable to pay, gave rise to the practice of allowing entries to be made after the goods have been weighed, measured or gauged, to make up the deficiency of the original or prime entry; the entry thus allowed to be made is called a post entry. Chit. Com. Law, 746.

POST FACTO). after the fact. Vide Ex post facto.

POST LITEM MOTAM. After the commencement of the suit.

2. Declarations or acts of the parties made post litem motam, are presumed to be made with reference to the suit then pending, and, for this reason, are not evidence in favor of the persons making them; while those made before an action has been commenced, in so me cases, as when a pedigree is to be proved, may in some cases be

considered as evidence. 4 Camp. 401.

POST MARK. A stamp or, mark put on letters in the post office.

2. Post marks are evidence of a letter having passed through the post office. 2 Camp. 620; 2 B. & P. 316; 15 East, 416; 1 M. & S. 201; 15 Com. R. 206.

POST MORTEM. After death; as, an examination post mortem, is an examination made of a dead body to ascertain the cause of death; an inquisition post mortem, is one made by the coroner.

POST NOTES. A species of bank notes payable at a distant period, and not on demand. 2 Watts & Serg. 468. A kind of bank notes intended to be transmitted at a distance by post. See 24 Maine, R. 36.

POST NATUS. Literally after born; it is used by the old law writers to designate the second son. See Puisne; Post−nati.

POST NUPTIAL. Something which takes place after marriage; as a post nuptial settlement, which is a conveyance made generally by the hushand for the benefit of the wife.

2. A post nuptial settlement is either with or without consideration. The former is valid even against creditors, when in other respects it in untainted with fraud. 4 Mason, 443; 2 Bailey 477. The latter, or when made without consideration, if bona fide, and the hushand be not involved at the time, and it be not disproportionate to his means, taking his debts and situation into consideration, is valid. 4 Mason, 443.7 See 4 Dall. 304; Settlement; Voluntary conveyance.

POST OBIT, contract. An agreement, by which the obligor borrows a certain sum of money and promises to pay a larger sum, exceeding the lawful rate of interest, upon the death of a person, from whom he has some expectation, if the obligor be then living. 7 Mass. R. 119; 6 Madd. R. 111; 5 Ves. 57; 19 Ves. 628.

2. Equity will, in general, relieve a party from these unequal contracts, as they are fraudulent on the ancestor. See 1 Story, Eq. _842; 2 P. Wms. 182; 2 Sim. R. 183, 192; 5 Sim. R. 524. But relief will be granted only on equitable terms, for he who seeks equity must do equity. 1 Fonb. B. 1, c. 2, _13, note, p; 1 Story, Eq. _344. See Catching Bargain; Macedonian Decree.

POST OFFICE. A place where letters are received to be sent to the persons to whom they, are addressed.

2. The post office establishment of the United States, is of the greatest importance to the people and to the government. The constitution of the United States has invested congress with power to establish post offices and post roads.. Art. 1, s. 8, n. 7.

3. By virtue of this constitutional authority, congress passed several laws anterior to the third day of March, 1825, when an act, entitled "An act to reduce into one the several acts establishing and regulating the post office department," was passed. 3 Story, U. S. 1985. It is thereby enacted, _1. That there be established, the seat of the government of the United States, a general post office, under the direction of a postmaster general. The postmaster general shall appoint two assistants, and such clerks as may be necessary for the performance of the business of his office, and as are authorized by law; and shall procure, and cause to be kept, a seal for the said office, which shall be affixed to commissions of postmasters, and used to authenticate all transcripts and copies which may be required from the department. He shall establish post offices, and appoint postmasters, at all such places as shall appear to him expedieut, on the post roads that are, or may be, established by law. He shall give his assistants, the postmasters, and all other persons whom he shall employ, or who may be employed in any of the departments of the general post office, instructions relative to their duty. He shall provide for the carriage of the mail on all post roads that are, or may be, established by law, and as often "he, having regard to the productiveness thereof, and other circumstances, shall think proper. He may direct the route or road, where there are more than one, between places designated by law for a post road, Which route shall be considered the post road. He shall obtain, from the postmasters, their accounts and vouchers for their receipts and expenditures, once in three months, or oftener, with the balances thereon arising, in favor of the general post office. He shall pay all expenses which may arise in conducting the post office, and in the conveyance of the mail, and all other necessary expenses arising on the collection of the revenue, and management of the general post office. He shall prosecute offences against the post office establishment. He shall, once in three months, render, to the secretary of the treasury, a quarterly account of all the receipts and expenditures in the said department, to be adjusted and settled as other public accounts. He shall, also, superintend the business of the department in all tho duties that are, or may be assigned to it: Provided, That, in case of the death, resignation, or, removal from office, of the postmaster general, all his duties shall be performed by his senior assistant, until a successor shall be appointed, and arrive at the general post office, to perform the business.

4. − _2. That the postmaster general, and all other persons employed in the general post office, or in the care, custody, or conveyance of the mail, shall, previous to entering upon the duties assigned to them, or the execution of their trusts, and before they shall be entitled to receive any emolument therefor, respectively take and subscribe the following oath, or affirmation, before some magistrate, and cause a certificate thereof to be filed in the general post office: "I, A B, do swear or affirm, (as the case may be, that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of the post office and post road s within the United States." Every person who shall be, in any manner, employed in the care, custody, or conveyance, or mauagement of the mail, shall be subject to all pains, penalties, and forfeitures, for violating the injunctions, or neglecting the duties, required of him by the laws relating to the establishment of the post office and post roads, whether such person shall have taken the oath or affirmation, above prescribed, or not.

5. − _3. That it shall be the duty of the postmaster general, upon the appointment of any postmaster, to require, and take, of such postmaster, bond, with good and approved security, in such penalty as he may judge sufficient, conditioned for the faithful discharge of all the duties of such postmaster, required by law, or which may be required by any instruction, or general rule, for the government of the department: Provided, however, That, if default shall be made by the postmaster aforesaid, at any time, and the postmaster general shall fail to institute suit against such post−master, and said sureties, for two years from and after such default shall be made, then, and in that case, the said sureties shall not be held liable to the United States, nor shall suit be instituted against them.

6. − _4. That the postmaster general shall cause a mail to be carried from the nearest post office, on any established post road, to the court house of any county which is now, or may hereafter be established in any of the states or territories of the United States, and which is without a mail; and the road on which such mail shall be transported, shall become a post road, and so continue, until the transportation thereon shall cease. It shall for the postmaster general to enter into contracts, for a term not exceeding four years, for extending the line of posts, and to authorize the persons, so contracting, as a compensation for their expenses, to receive during the continuance of such contracts, at rates not exceeding those for like distances, established by this act, all the postage which shall arise on all letters, newspapers, magazines, pamphlets, and packets, conveyed by any such posts; and the roads designated in such contracts, shall, during the continuance thereof, be deemed and considered as post roads, within the provision of this act: and a duplicate of every such contract shall, within sixty days after the execution thereof, be lodged in the office of the comptroller of the treasury of the United States.

7. − _5. That the postmaster general be authorized to have the mail carried in any steamboat, or other vessel, which shall be used as a packet in, any of the waters of the United States, on such terms and conditions as shall be considered expedient: Provided, That he does not pay more than three cents for each letter, And more than one half cent for each newspaper, conveyed in such mail.

8. − _8. That, whenever it shall be made appear, to the satisfaction of the postmaster general, that any road established, or which may hereafter be established as a post road, is obstructed by fences, gates, or tars, or other than those lawfally used on turnpike, roads to collect their toll, and not kept in good repair, with proper bridges and ferries, where the same may be necessary, it shall be the duty of the postmaster general to report the same to congress, with such information as can be obtained, to enable congress to establish some other road instead of it, in the same main direction.

9. − _39. That it shall be the duty of the postmaster general to report, annually, to congress, every post road which shall not, after the second year from its establishment, have produced one−third of the expense of carrying the mail on the same.

10. The act "to change the organization of the post office department, and to provide more effectually for the settlement of the accounts thereof," passed July 2, 1836, 4 Shars. cont. of Story L. U. S. 2464, contains a variety of minute provisions for the settlement of the revenue of the post office department.

11. By the act of the 3d of March, 1845, various provisions are made to protect the department from fraud and to prevent the abuse of franking.

12. Finding roads in use throughout the country, congress has established, that is, selected such as suited the convenience of the government, and which the exigencies of the people required, to be post roads. It has seldom exercised the power of making new roads, but examples are not wanting of roads having been made under the express authority of congress. Story, Const. _1133. Vide Dead Letter; Jeopardy; Letter; Mail; Newspaper; Postage; Postmaster; Postmaster general.

POSTAGE. The money charged by law for carrying letters, packets and documents by mail. By act of congress

of March 3, 1851, Minot's Statute at Large, U. S. 587, it is enacted as follows:

2. − _1. That from and after the thirtieth day of June, eighteen hundred and fifty−one, in lieu of the rates of postage now established by law, there shall be charged the following rates, to with or every single letter in manuscript, or paper of any kind, upon which information shall be asked for, or communicated, in writing, or, by marks or signs, conveyed in the mail for any distance between places within the United State's, not exceeding three thousand miles, when the postage upon such letter shall have been prepaid, three cents, and five cents when the postage thereon shall not have been prepaid; and for any distance exceeding three thousand miles, double those rates. For every such, single letter or paper when conveyed wholly or in part by sea, and to or from a foreign country, for any distance over twenty−five hundred miles, twenty cents, and for any distance under twenty−five hundred miles, ten cents, (excepting, however, all cases where such postages have been or shall be adjusted at different rates, by postal treaty or convention already concluded or hereafter to be made;) and for a double letter there shall be charged double the rates above specified; and for a treble letter, treble those rates; and for a quadruple letter, quadruple those rates; and every letter or parcel not exceeding half an ounce in weight shall be deemed a single letter, and every additional weight of half an ounce, or additional weight of less than half an ounce, shall be charged with an adclitional single postage. And all drop letters, or letters placed in any post office, not for transmission, but for delivery only, shall be charged with postage at the rate of one cent each; and all letters which shall hereafter be advertised as remaining over or uncalled for in any post office, shall be charged with one cent in addition to the regular postage, both to be accounted for as other postages are.

3. − _2. That all newspapers not exceeding three ounces in weight, sent from the office of publication to actual and bona fide subscribers, shall be charged with postage as follows, to wit: All newspapers published weekly only, shall circulate in the mail free of postage within the county where published, and that the postage on the regular numbers of a newspaper published weekly, for any distance not exceeding fifty miles out of the county where published, shall be five cents per quarter; for any distance exceeding fifty miles and not exceeding three hundred miles, ten cents per quarter; for any distance exceeding three hundred miles and not exceeding one thousand miles, fifteen cents per quarter; for any distance exceeding one thousand miles and not exceeding two thousand miles, twenty cents per quarter; for any distance exceeding two thousand miles and not exceeding four thousand miles, twenty−five cents per quarter; for any distance exceeding four thousand miles, thirty cents per quarter; and all newspapers published monthly, and sent to actual aud bona fide subscribers, shall be charged with one−fourth the foregoing rates; and on all such newspapers published semi−monthly shall be charged with one−half the foregoing rates; and papers published semi−weekly shall be charged double those rates; triweekly, treble those rates; and oftener than tri−weekly, five times, those rates. And there shall be charged upon every other newspaper, and each circular not sealed, handbill, engraving, pamphlet, periodical, magazine, book, and every other description of printed matter, which shall be unconnected with any manuscript or written matter, and which it may be lawful to transmit through the mail, of no greater weight than one ounce, for any distance not exceeding five hundred miles, one cent; and for each additional ounce or fraction of an ounce, one cent; for any distance exceeding five hundred miles and not exceeding one thousand five hundred miles, double those rates; for any distance, exceeding one thousand five hundred miles−and not exceeding two thousand five hundred miles, treble those rates; for any distance exceeding two thousand five hundred miles and not exceeding three thousand five hundred miles, four times those rates; for any distance exceeding three thousand five hundred miles, five times those rates. Subscribers to all periodicals shall be required to pay one quarter's postage in advance, and in all such cases the postage shall be one−half the foregoing rates. Bound books, and parcels of printed matter not weighing over thirty−two ounces, shall be deemed mailable matter under the provisions of this section. And the postage on all printed matter other than newspapers and periodicals published at intervals not exceeding three months, and sent from the office of publication, to actual and bona fide subscribers, to be prepaid; and in ascertaining the weight of newspapers for the purpose of determining the amount of postage chargeable thereon, they shall be weighed when in a dry state, And whenever any printed matter on which the postage is required by this section to be prepaid, shall, through the inattention of postmasters or otherwise, be sent without prepayment, the same shall be charged with double the amount of postage which would have been chargeable thereon if the postage had been prepaid; but nothing in this act contained shall subject to postage any matter which is exempted from the payment of postage by any existing law, And the postmaster general, by and with the advice and consent of the president of the United States, shall be, and he hereby is, authorized to reduce or enlarge, from time to time, the rates of postage upon all letters. and other mailable matter conveyed between the United States and any foreign country

for the purpose of making better postal arrangements with other governments, or counteracting any adverse measures affecting our postal intercourse with foreign countries, and postmasters at the office of delivery are hereby authorized, and it shall be their duty, to remove the wrappers and envelopes from all printed matter and pamphlets not charged with letter postage, for the purpose of ascertaining whether there is upon or connected with any such printed matter, or in such package, any matter or thing which would authorize or require the charge of a higher rate of postage thereon. And all publishers of pamphlets, periodicals, magazines, and newspapers, which shall not exceed sixteen ounces in weight, shall be allowed. to interchange their publications reciprocally, free of postage: Provided, That such interchange shall be confined to a single copy of each publication: And provided, also, That said publishers may enclose in their publications the bills for subscriptions thereto, without any additional charge for postage; And provided, further, Thai in all cases where newspapers shall not contain over three hundred square inches, they may be transmitted through the mails by the publishers to bona fide subscribers, at one−fourth the rates fixed by this act.

5. By the act of March 3, 1845, providing for the transportation of the mail between the United States and foreign countries, it is enacted by the 3d section, that the rates of postage to be charged and collected on all letters, packages, newspapers, and pamphlets, or other printed matter, between the ports of the United States and the ports of foreign governments enumerated herein, transported in the United States mail under the provisions of this act, shall be as follows: Upon all letters and packages not exceeding one−half ounce in weight, between any of the ports of the United States aud the ports of England or France, or any other foreign port not less than three thousand miles distant twenty−four cents, with the inland postage of the United States added when sent through the United States mail to or from the post office at a port of the United States; upon letters and packets over one−half an ounce in weight, and not exceeding one ounce, forty−eight cents; and for every additional half ounce or fraction of an ounce, fifteen cents; upon all letters and packets not, exceeding one−half ounce, gent through the United States mail between the ports of the United States and any of the West India islands, or islands in the Gulf of Mexico, ten cents; and twenty cents upon letters and packets not exceeding one ounce; and five cents for every additional half ounce or fraction of an ounce; upon each newspaper, pamphlet, and price current, sent in the mail between the United States and any of the ports and places above enumerated, three cents, with inland United States postage added when the same is transported to or from said port of the United States in the United States mail.

POSTAGE STAMPS. The act of congress, approved March 3, 1847, section 11, and the act of congress of March 3, 1841, sections 3, 4, provide that, to facilitate the transportation of letters in the mail, the postmaster general be authorized to prepare postage, stamps, which, when attached to any letter or packet, shall be evidence of the payment of the postage, chargeable on such letter. The same sections declare that any person who shall falsely or fraudulently make, utter, or, forge any postage stamp, with the intent to defraud the post office department, shall be deemed guilty of felony, and be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding five years, or by both such fine and imprisonment. And if any person shall use or attempt to use, in pre−payment of postage, any postage stamp which shall have been used before for like purposes, such person shall be subject, to a penalty of fifty dollars for every such offence, to be recovered in the name of the United States in any court of competent jurisdiction.

POSTEA, practice. Afterwards. The endorsement on the nisi prius record purporting to be the return of the judge before whom a cause is tried, of, what has been done in respect of such record. It states the day of trial, before what judge, by name, the cause is tried, and also who is or was an associate of such judge; it also states the appearance of the parties by their respective attorneys, or their defaults; and the summoning and choice of the jury, whether those who were originally summoned, or those who were tales, or taken from the standers by; it then states the finding of the jury upon oath, and, according to the description of the action, and the assessment of the damages with the occasion thereof, together with the costs.

2. These are the usual matters of fact contained in the postea, but it varies with the description of the action. See Lee’s Dict. Postea; 2 Lill. P. R. 337; 16 Vin. Abr. 465; Bac. Use of the Law, Tracts, 127, 5.

3. When the trial is decisive, and neither the law nor the facts can afterwards be controverted, the postea is delivered by the proper officer to the attorney of the successful party, to sign his judgment; but it not unfrequently happens that after a verdict has been given, there is just cause to question its validity, in such case the postea remains in the custody of the court. Eunom. Dial. 2, _33, p. 116.

POSTERIORES. This term was used by the Romans to denote the descendant in a direct line beyond the sixth

degree. It is still used in making genealogical tables.

POSTERIORITY, rights. Being or, coming after. It is a word of comparison, the correlative of which is priority; as, when a man holds lands from two landlords, he holds from his ancient landlord by priority and from the other by posteriority. 2 Inst. 392.

2. These terms, priority and posteriority, are also used in cases of liens the first are prior liens, and are to be paid in the first place; the last are posterior liens, and are not entitled to payment until the former have been satisfied.

POSTERITY, descents. All the descendants of a person in a direct line.

POSTHUMOUS CHILD. after the death of its father; or, when the Caesarian operation is performed, after that of the mother.

2. Posthumous children are entitled to take by descent as if they had been born at the time of their deceased ancestor. When a father has made a will without providing for a posthumous child, such a will is in some states, as in Pennsylvania, revoked pro tanto by implication. 4 Kent, Com. 506; Dig. 28, 5, 92; Ferriere, Com. h. t.; Domat, Lois Civiles, part 2 ' liv. 2, t. 1, s. 1: Merl. Rep. h. t.; 2 Bouv. Inst. n. 2158.

POSTILS, postillae. Marginal notes made in a book or writing for reference to other parts of the same, or some other book or writing.

POSTLIMINIUM. That right in virtue of which persons and things taken by the enemy are restored to their former state, when coming again under the power of the nation to which they belong. Vat. Liv. 3, c. 14, s. 204; Chit. Law of Nat. 93 to, 104; Lee on Captures, ch. 5; Mart. Law of Nat. 305; 2 Wooddes. p. 441, s. 34; 1 Rob. Rep. 134; 3 Rob. Rep. 236; Id. 97 2 Burr. 683; 10 Mod. 79; 6 Rob. R. 45; 2 Rob. Rep. 77; 1 Rob. Rep. 49; 1 Kent, Com. 108.

2. The jus posiliminii was a fiction of the Roman law. Inst. 1, 12, 5.

3. It is a right recognized by the law of nations, and contributes essentially to mitigate the, calamities of war. When, therefore, property taken by the enemy is either recaptured or rescued from him, by the fellow subjects or allies of the original owner, it does not become the property of the recaptor or rescuer, as if it had been a new prize, but it is restored to the original owner by right of postliminy, upon certain terms.

POSTMAN, Eng. law. A barrister in the court of exchequer, who has precedence in: motions.

POSTMASTER, or DEPUTY POSTMASTER. An officer of the United States appointed by the postmaster general to hold his office. during the, plaasure of the former. Before entering on the duties of his office, he is required to give bond with surety to be approved by the postmaster general. Act of 3d March, 1825, s. 3. 12. Every postmaster is required to keep an office in the place for which he may be appointed; and it is his duty to receive and forward by mail, without delay, all letters, papers, and packets as directed; to receive the mails and deliver, at all reasonable hours, all letters, papers and packets to the persons entitled thereto.

3. In lieu of commissions allowed deputy postmasters by the 14th section of the act of 3d March, 1845,.the postmaster general is authorized by the act of March 1, 1847, s. 1, to allow, on the proceeds of their respective offices, a commission not exceeding the following rates on the amount received in any one year, or a due proportion thereof for less−than a year: On a sum not exceeding one hundred dollars, forty per cent; on a sum over the first hundred and not exceeding four hundred dollars, thirty−three and one−third per cent; on a sum over and above the first four hundred dollars and not exceeding twenty−four hundred dollars, thirty per cent.; on a sum over twenty−four hundred dollars, twelve and one−half per cent.; on all sums arising from the postage on newspapers, magazines, and pamphlets, fifty per cent.; on the amount of postages on letters or packets received for distribution, seven per cent.: Provided, That all allowances, commissions, or other emoluments, shall be subject to the provisions of the forty−first section of the act which this is intended to amend; and that the annual compensation therein limited shall be computed for the fiscal year commencing on the first of July and ending the thirtieth of June each year, and that for any period less than a year the restrictions contained in said section shall be held to apply in a due proportion for such fractional period: And, provided further, That the compensation to any,, deputy postmaster under the foregoing provisions to be computed upon the receipt at his office of a larger sum shall in no case fall short of the amount to which he would be entitled under a smaller sum received at his office.

4. By act of congress approved March 3, 1851, _6, it is enacted, That to any postmaster whose commissions may be reduced below the amount allowed at his office for the year ending the thirtieth day of June, eighteen hundred and fifty−one, and whose labors may be increased, the postmaster general shall be authorized, in his discretion, to allow such additional commissions as be may deem just and proper Provided, That the whole amount of

commissions allowed such postmaster during any fiscal year, shall not exceed by more than twenty per centum the amount of commissions at such office for the year ending the thirtieth day of June, eighteen hundred and fifty−one.

5. Although not subject to all the, responsibilities of a common carrier, yet a postmaster is liable for all losses and injuries occasioned by his own default in office. 3 Wils. Rep. 443; Cowp. 754; 5 Burr. 2709; 1 Bell's Com. 468; 2 Kent. Com. 474; Story on Bailm. _463.

6. Whether a postmaster is liable for the acts of his clerks or servants seems not to be settled. 1 Bell's Com. 468, 9. In Pennsylvania it has been decided that he is not responsible for their secret delinquencies, though perhaps he is answerable for want of attention to the official conduct of his subordinates. 8 Watts. R. 453. Vide Frank; Post Office.

POSTMASTER GENERAL. The chief officer of the post office department of the United States. Various duties are imposed upon this officer by the acts of congress of March 3, 1825, and July 2, 1836, which will be found under the articles Mail; Post Office and Postage.

2. The act of February 20, 1819, 3 Story's L. U. S. 1720, gives the postmaster general a salary of four thousand dollars per annum and that of March 2, 1827, 3 Story's L. U. S. 2076, declares there shall be paid, annually, to the postmaster general two thousand dollars, in addition to his present salary.

POST NATI. Born after. This term is applied to persons who came to reside in tho United States after the declaration of independence. They are generally considered aliens, unless they become naturalized, or are otherwise so declared, by law. In Massachusetts, by statutory provision, and in Connecticut, by decision, a person born abroad, if he went there to reside before the treaty of peace of the 3d of September, 1783, is considered a citizen. 2 Pick. R. 394 5 Day, R. 169; 2 Kent, Com. 51, 2.

POSTULATIO, Rom. civ. law. The name given to the first act in a criminal proceeding. A person who wished to accuse another of a crime, appeared before the praetor and asked his authority for that purpose, designating the person intended. This act was called postulatio. The postulant (calumniam jurabat) made oath that he was not influenced by a spirit of calumny, but acted in good faith, with a view to the public interest. The praetor received this declaration, at, first made verbally, but afterwards in writing, and called a libel. The postulatio was posted lip in the forum, to give public notice of the names of the accuser and the accused. A second accuser sometimes appeared and went through the same formalities.

2. Other persons were allowed to appear and join the postulant or principal accuser. These were said postulare subscriptionem and were denominated subscriptores. Cic. in Caecil Divin. 15. But commonly such persons acted concurrently with the postulant, and inscribed, their names at the time he first appeared. Only one accuser, however, was allowed to act, and if the first inscribed did not desist in favor of the second, the right was determined, after discussion, by judges appointed for the purpose. Cic. in Verr. I. 6. The preliminary proceeding was called divinatio, and is well explained, in the oration of Cicero, entitled Divinatio. Bee Aulus Gellius, Att. Noct. lib. II. cap. 4.

3. The accuser having been determined in this manner, he appeared, before the praetor, and formally charged the accused by name, specifying the crime. This was called nominis et criminis, delatio. The magistrate reduced it to writing, which was called inscriptio, and the accuser and his adjuncts, if any, signed it, subscribebant. This proceeding corresponds to the indictment of the common law.

4. If the accused appeared, the accuser formally charged him with the crime. If the accused confessed it, or stood mute, he was adjudged to pay the penalty. If he denied it, the inscriptio contained his answer, and he was then (in reatu) indicted, (as we should say) and was called reus, and a day was fixed, ordinarily after an interval of at least ten days, according to the nature of the case, for the appearance of the parties. In the case of Verres, Cicero obtained one hundred and ten days to prepare his proofs, although he accomplished it in fifty days, and renounced, as he might do, the advantage of the remainder of the time allowed him.

5. At the day appointed for the trial the accuser and his adjuncts or colleagues, the accused, and the judges, were summoned by the herald of the preator. If the accuser did not appear, the' case was erased from the roll. If the accused made default he was condemned. If both parties appeared, a jury was drawn by the praetor or judex questionis. The jury were called jurati homines, and the drawing of them sortitio, and they were taken from a general list made out for the year. Either party had a right to object to a certain extent to the persons drawn, and then there was a second drawing called subsortitio, to complete the number.

6. In some tribunals (quaestiones) the jury were (editi) produced in equal number by the accuser and the accused,

and sometimes by the accuser alone, who were objected to or challenged in different ways, according to the nature of the case. The number of the jury also varied according to the. tribunal, (quaestio) they were sworn before the trial began. Hence they were called jurati.

7. The accusers ana often the subscriptores were heard, and afterwards the accused, either by himself or by his advocates, of whom he commonly had several. The witnesses, who swore by Jupiter, gave their testimony after the discussions or during the progress of the pleadings of the accuser. In some cases it was necessary to plead the cause on the third day following the first hearing, which was called comperendinatio.

8. After the pleadings were concluded the praetor or the judex quastionis distributed tablets to the jury, upon which each wrote secretly, either the letter A (absolvo) or the letter C, (condemno) or N. L. (non liquet.) These tablets were deposited in an urn. The president assorted and counted the tablets. If the majority were for acquitting the accused, the magistrate declared it by the words fecisse non videtur, and by the words fecisse videtur if the majority were for a conviction. If the tablets marked N. L. were so many as to prevent an absolute majority for a conviction or acquittal, the cause was put off for more ample information, ampliatio, which the preator declared by the word amplies. Such in brief was the course of proceedings before the quaestiones perpeduae.

9. The forms observed in the comitia centiniata and comitia tributa were nearly the same, except the composition of the tribunal, and the mode of declaring the vote.

10. It is easy to perceive in this account of a criminal action, the germ of the proceedings on an indictment at common law.

POT−DE−VIN, French law. A sum of money frequently paid, at the moment of entering into a contract, be=yond the price agreed upon.

2. It differs from arrha, (q. v.) in this, that it is no part of the price of the thing sold, and, that the person who has received it, cannot by returning double the amount, or the other party by losing what he has paid, rescind the contract. 18 Toull. n. 52.

POTENTATE. One who has a great power over, an extended country; a sovereign.

2. By the naturalization laws, an alien is required, before he can be naturalized, to renounce all allegiance aud fidelity to any foreign prince, potentate, state, or sovereign whatever.

POTESTAS, civil law. A Latin word which signifies power; authority; domination; empire. It has several meaning. 1. It signifies imperium, or the jurisdiction of magistrates. 2. The power of the father over his children, patriapotestas. 3. The authority of masters over their slaves, which makes it nearly synonymous with dominium. See Inst. 1, 9, et 12; Dig. 2, 1, 13, 1; Id. 14, 1; Id. 14, 4, 1, 4.

POUND, weight. There are two kinds of weights, namely, the troy, and the avoirdupois. The pound avoirdupois is greater than the troy pound, in the proportion of seven thousand to five thousand seven hundred and sixty. The troy pound contains twelve ounces, that of avoirdupois sixteen ounces.

POUND, Eng. law. A place enclosed to keep strayed animals in. 5 Pick. 514; 4 Pick. 258; 9 Pick. 14.

POUND, money. The sum of twenty shillings. Previous to the establishment of the federal currency,, the different states made use of the pound in computing money; it was of different value in the several states.

2. Pound sterling, is a denomination of money of Great Britain. It is of the value of a sovereign. (q. v.) In calculating the rates of duties, the pound sterling shall be considered and taken as of the value of four dollars and eighty cents. Apt of March 3, 1833.

3. The pound sterling of Ireland is to be computed, in calculating said duties, at four dollars and ten cents. Id.

4. The pound of the British provinces Nova Scotia, New Brunswick, Newfoundland, and Canada, is to be so computed at four dollars. Act of May, 22, 1846.

POUNDAGE, practice. The amount allowed to the sheriff, or other officer, for commissions on, the money made by virtue of an execution. This allowance varies in different states, and to different officers.

POURPARLER, French law. The conversations and negotiations which have taken place between the parties in order to make an agreement. These form no part of the agreement. Pard. Dr. Com. 142.

2. The general rule in the common law is the same, parol proof cannot, therefore, be given to contradict, alter, add to, or diminish a written instrument, except in some particular cases. 1 Dall. 426; Dall. 340; 8 Serg. & Rawle, 609; 7 Serg. Rawle, 114.

POURSUIVANT. A follower, a pursuer. In the ancient English law, it signified an officer who attended upon the king in his wars, at the council table, exchequer, in his court, &e., to be sent as a messenger. A poursuivant was, therefore, a messenger of the king.

POWER. This is either inherent or derivative. The former is the right, ability, or faculty of doing something, without receiving that right, ability, or faculty from another. The people have the power to establish a form of govemment, or to change one already established. A father has the legal power to chastise his son; a master, his apprentice.

2. Derivative power, which is usually known, by the technical name of power, is an authority by which one person enables another to do an act for him. Powers of this kind were well known to the common law, and were divided into two sorts: naked powers or bare authorities, and powers coupled with an interest. There is a material difference between them. In the case of the former, if it be exceeded in the act done, it is entirely void; in the latter it is good for so much as is within the power, and void for the rest only.

3. Powers derived from, the doctrine of uses may be defined to be an authority, enabling a person, through the medium of the statute of uses, to dispose of an interest, vested either in himself or another person.

4. The New York Revised Statute's define a power to be an authority to do some act in relation to lands, or the creation of estates therein, or of charges thereon, which the owner granting or reserving such power might himself lawfully perform.

5. They are powers of revocation and appointment which are frequently inserted in conveyances which owe their effect to the statute of uses; when executed, the uses originally declared cease, and new uses immediately arise to the persons named in the appointment, to which uses the statute transfers the legal estate and possession.

6. Powers being found to be much more convenient than conditions, were generally introduced into family settlements. Although several of these powers are not usually called powers of revocation, such as powers of jointuring, leasing, and charging settled estates with the payment of money, yet all these are powers of revocation, for they operate as revocations, pro tanto, of the preceding estates. Powers of revocation and appointment may be reserved either to−the original owners of the land or to strangers: hence the general division of powers into those which relate to the land, and those which are collateral to it.

7. Powers relating to the land are those given to some person having an interest in the land over which they are to be exercised. These again are subdivided into powers appendant and in gross.

8. A power appendant is where a person has an estate in land, with a power of revocation and appointment, the execution of which falls within the compass of his estate; as, where a tenant for life has a power of making leases in possession.

9. A power in gross is where a person has an estate in the land, with a power of appointment, the execution of which falls outof the compass of his estate, but, notwithstanding, is annexed in privity to it, and takes effect in the appointee, out of an interest vested in the appointer; for instance, where a tenant for life has a power of creating an estate, to commence after the determination of his own, such as to settle a jointure on his wife, or to create a term of years to commence after his death, these are called powers in gross, because the estate of the person to whom they are given, will not be affected by the execution of them.

10. Powers collateral, are those which are given to mere strangers, who have no interest in the laud: powers of sale and exchange given to trustees in a marriage settlement are of this kind. Vide, generally, Powell on Powers, assim; Sugden on Powers, passim; Cruise, Dig. tit. 32, ch.

13; Vin. Ab. h. t.; C om. Dig. Poiar; 1 Supp. to Ves. jr. 40, 92, 201, 307; 2 Id. 166, 200; 1 Vern. by Raithby, 406; 3 Stark. Ev. 1199; 4 Kent, Com. 309; 2 Lilly's Ab. 339; Whart. Dig. h. t. See 1 Story, Eq. Jur. _169, as to the execution of a power, and when equity will supply the defect of execution.

11. This classification of powers is admitted to be important only with reference to the ability of the donee to suspend, extinguish or merge the power. The general rule is that a power shall not be exercised in derogation of a prior grant by the appointer. But this whole division of powers has been condemned' as too artificial and arbitrary.

12. Powell divides powers into general and particular. powers. General powers are those to be exercised in favor of any person whom the appointer chooses. Particular powers are those which are to be exercised in favor of specific objects. 4 Kent, Com. 311, Vide, Bouv. Inst. Index, h. t.; Mediate powers; Primary powers.

POWER OF ATTORNEY. Vide Letter of attorney, and 1 Mood. Or. Cas. 57, 58.

POYNING'S LAW, Engl. law. The name usually given to an act which was passed by a parliament holden in Ireland in the tenth of Henry the Seventh; it enacts that all statutes made in the realm of England before that time should be in force and put in use in the realm of Ireland. Irish Stat. 10 H. VII. c. 22; Co. Litt. 141 b; Harg. n. 3.

PRACTICE. The form, manner and order of conducting and carrying on suits or prosecutions in the courts through their various stages, according, to the principles of law, and the rules laid down by the respective courts.

2. By practice is also meant the business which an attorney or counsellor does; as, A B has a good practice.

3. The books on practice are very numerous; among the most popular are those Of Tidd, Chiity, Archbold, Sellon, Graham, Dunlap, Caines, Troubat and Haly, Blake, Impey.

4. A settled, uniform, and loll, continued practice, without objection is evideuce of what the law is, and such practice is based on principles which are founded in justice and convenience. Buck, 279; 2 Russ. R. 19, 570; 2 Jac. It. 232; 5 T. R. 380; 1 Y. & J. 167, 168; 2 Crompt. & M. 55; Ram on Judgm. ch. 7.

PRAEDA BELLICA. Lat. Booty; property seized in war. Vide Booty; Prize.

PRAECIPE or PRECIPE, practice. The name of the written instructions given by an attorney or plaintiff to the clerk or prothonotary of a; court, whose duty it is to make out the writ, for the making of the same.

PRAEDIAL. That which arises immediately from the ground; as, grain of all sorts, hay, wood, fruits, herbs, and the like.

PRAEDIUM DOMINANS, civil law. The name given to an estate to which a servitude is due; it is called the ruling estate.

PRAEDIUM RUSTICUM, civil law. By this is understood all heritages whicb are not destined for the use of man's habitation; such, for example, as lands, meadows, orchards, gardens, woods, even though they should be within the boundaries of a city.

PRAEDIUM SERVIENS, Civil law. The name of an estate which suffers or yields a service to another estate.

PRAEDIUM URBANUM, civil law. By this term is understood buildings and edifices intended for the habitation and use of man, whether they be built in cities or whether they be constructed in the country.

PRAEFECTUS VIGILUM, Roman civ. law. The chief officer of the night watch. His jurisdiction extended to certain offences affecting the public peace; and even to larcenies. But he could inflict only slight punishments.

PRAEMUNIRE. In older to prevent the pope from assuming the supremacy in granting ecclesiastical livings, a number of statutes were made in England during the reigns of Edward I., and his successors, punishing certain acts of submission to the papal authority, therein mentioned. In the writ for the execution of these statutes, the words praemunire facias, being used, to command a citation of the party, gave not only to the writ, but to the offence itself, of maintaining the papal power, the name of praemunire. Co. Lit. 129; Jacob's L. D. h. t.

PRAETOR, Roman civil law. A municipal officer of Rome, so called because, (praeiret populo,) he went before or took precedence of the people. The consuls were at first called praetors. Liv. Hist. III. 55. He was a sort of minister of justice, invested with certain legislative powers, especially in regard to the forms or formalities of legal proceedings. Ordinarily, be aid not decide causes as a judge, but prepared the grounds of decision for the judge and sent to, him the questions to be decided between the parties. The judge was always chosen by the parties, either directly, or by rejecting, under certain rules and limitations, the persons proposes to them by the praetor. Hence the saying of Cicero, (pro Cluentis, 43,) that no one could be judged except by a judge of his own choice. There were several kinds of officers called proctors. See Vicat, Vocab.

2. Before entering on his functions he published an edict announcing the system adopted by him for the application and interpretation of the laws during his magistracy. His authority extended over all jurisdictions, and was summarily expressed by the word do, dico, addico, i, e. do I give the action, dico I declare the law, I promulgate the edict, addico I invest the judge with the right of judging. There were certain cases which he was bound to decide himself, assisted by a council chosen by himself perhaps the Decemvirs. But the greater part of causes brought before him, be sent either to a judge, an arbitrator, or to recuperators, (recuperatores,) or to the centumvirs, as before stated. Under the empire the powers of the praetor passed by degrees to the praefect of the praetorium, or the praefect of the city; so that this magistrate, who at first ranked with the consuls, at last dwindled into a director or manager of the public spectacles or games.

3. Till lately, there were officers in certain cities of Germany denominated praetors Vide 1 Kent, Com. 528.

PRAGMATIC SANCTION, French law. This expression is used to designate those ordinances which concern the most important object of the civil or ecclesiastical administration. Merl. Repert, h. t.; 1 Fournel, Hist. des Avocats, 24, 38, 39. 2. In the civil law, the answer given by the emperors on questions of law, when consulted by a corporation or the citizens of a province, or of a, municipality, was called a pragmatic sanction. Lecons El. du Dr. Civ. Rom. _53. This differed from a rescript. (q. v.)

PRAYER, chanc. pleadings. That part of a bill which asks for relief.

2. The skill of the solicitor is to be exercised in framing this part of the bill. An accurate specification of the matters to be decreed in complicated cases, requires great discernment and experience; Coop. Eq. Pl. 13; it is

varied as the case is made out, concluding always with a prayer of general relief, at the discretion of the court. Mitf. Pl. 45.

PRAYER OF PROCESS, chanc. plead. That part of a bill which prays that the defendant be compelled to appear and answer the bill, and abide the determination of the court on the subject, is called prayer of process. This prayer must contain the name's of all Persons who are intended to be made parties. Coop. Eq. Pl. 16; Story, Eq. Pl. _44.

PRAYER FOR RELIEF, chan. pleading. This is the name of that part of the bill, which, as the phrase imports, prays for relief. This prayer is either general or special but the general course is for the plaintiff to make a special prayer for particular relief to which he thinks himself entitled, and then to conclude with a prayer of general relief at the discretion of the court. Story, Eq. Pl. _40; 4 Bouv. Inst. n. 4174−6.

PREAMBLE. A preface, an introduction or explanation of what is to follow: that clause at the head of acts of congress or other legislatures which explains the reasons why the act is made. Preambles are also frequently put in contracts to, explain the motives of the contracting parties,

2. A preamble is said to be the key of a statute, to open the minds of the makers as to the mischiefs which are to be remedied, and the objects which are to be accomplished by the provisions of the statutes. It cannot amount, by implication, to enlarge what is expressly given. 1 Story on Const. B 3, c. 6. How far a preamble is to be considered evidence of the facts it recites, see 4 M. & S. 532; 1 Phil. Ev. 239; 2 Russ. on Cr. 720; and see, generally, Ersk. L. of Scotl. 1, 1, 18; Toull. liv. 3, n. 318; 2 Supp. to Ves. jr. 239; 4 L. R. 55; Barr. on the Stat. 353, 370.

PRECARIOUS RIGHT. The right which the owner of a thing transfers to another, to enjoy the same until it shall please the owner to revoke it.

2. If there is a time fixed during which the right may be used it is then vested for that time, and cannot be revoked until after its expiration. Wolff, Inst. _833.

PRECARIUM. The name of a contract among civilians, by which the owner of a thing at the request of another person, gives him a thing to use as long as the owner shall please. Poth. h. t. n. 87. See Yelv. 172; Cro. Jac. 236; 9 Cowen, 687; Roll. R. 128; Bac. Ab. Bailment, c; Ersk. Prin. B. 3, t. 1, n. 9; Wolff, Ins. Nat. _333.

2. A tenancy at will is a right of this kind.

PRECATORY WORDS. Expressions in a will praying or requesting that a thing shall be done.

2. Although recommendatory words used by a testator, of themselves, seem to leave the devisee to act as he may deem proper, giving him a discretion, as when a testator gives an estate to a devisee, and adds that he hopes, recommends, has a confidence, wish or desire that the devisee shall do certain things for the benefit of another person; yet courts of equity have construed such precatory expressions as creating a trust. 18 Ves. 41; 8 Ves. 380; Bac. Ab. Legacies, B, Bouv. ed.

3. But this construction will not prevail when either the objects to be benefited are imperfectly described, or the amount of property to which the trust should attach, is not sufficiently defined . 1 Bro. C. C. 142; 1 Sim. 542, 556. See 2 Story, Eq. Jur. _1070; Lewin on Trusts, 77; 4 Bouv. Inst. n. 3953.

PRECEDENCE. The right of being first placed in a certain order, the first rank being supposed the most honorable.

2. In this country no precedence is given by law to men.

3. Nations, in their intercourse with each other, do not admit any precedence; hence in their treaties in one copy one is named first, and the other in the other. In some cases of officers when one must of necessity act as the chief, the oldest in commission will have precedence; as when the president of a court is not present, the associate who has the oldest commission will have a precedence; or if their. commissions bear the same date, then the oldest man.

4. In. the, army and navy there is an order of precedence which regulates the officers in their command.

PRECEDENTS. the decision of courts of justice; when exactly in point with a case before the court, they are generally held to have a binding authority, as well to keep the scale of justice even and steady, as because the law in that case has been solemnly declared and determined. 9 M. R. 355.

2. To render precedents valid, they must be founded in reason and justice; Hob. 270; must have been made upon argument, and be the solemn decision of the court; 4 Co. 94; and in order to give them binding effect, there must be a current of decisions. Cro. Car. 528; Cro. Jac. 386; 8 Co. 163.

3. According to Lord Talbot, it is "much better to stick to the known general rules, than to follow any one

particular precedent, which may be founded on reason, unknown to us." Cas. Temp. Talb. 26. Blackstone, 1 Com. 70, says, that a former decision is in general to be followed, unless "manifestly absurd or unjust,", and, in the latter case, ii is declared, when overruled, not that the former sentence was bad law, but that it was not law.

4. Precedents can only be useful when they show that the case has been decided upon a certain principle, and ought not to be binding when contrary to such principle. If a precedent is to be followed because it is a precedent, even when decided against an established rule of law, there can be no possible correction of abuses, because the fact of, their existence renders them above the law. It is always safe to rely upon principles. See Principle; Rewon. de 16 Vin. Ab. 499; Wesk. on Inst. h. t.: 2 Swanst. 163; 2 Jac. & W. 31; 3 Ves. 527; 2 Atk. 559; 2 P. Wms. 258; 2 Bro. C. C. 86; 1 Ves. jr. 11; and 2 Evans Poth. 377, where the author argues against the policy of making precedents binding when contrary to reason. See also 1 Kent, Comm.475−77; Liv.Syst. 104−5; Gresl. Ev. 300; 16 Johns. R. 402; 20 Johns. R. 722; Cro. Jac. 527; 33 H. VII. 41; Jones, Bailment, 46; and the articles Reason and Stare decisis.

PRECEPT. A writ directed to the sheriff or other officer, commanding him to do something. The term is derived from the operative praecipimus, we command.

PRECINCT. The district for which a high or petty constable is appointed, is in England, called a precinct. Willc. Office of Const. xii.

2. In day time all persons are bound to recognize a constable acting within his own precincts; after night the constable is required to make himself known, and it is, indeed, proper he should do so at all times. Ibid. n. 265, p. 93.

PRECIPUT, French law. An object which is ascertained by law or the agreement of the parties, and which is first to be taken out of property held in common, by one having a right, before a partition takes place.

2. The preciput is an advantage, or a principal part to which some one is entitled, praecipium jus, which is the origin of the word preciput. Dict. de Jur. h. t.; Poth. h. t. By preciput is also understood the right to sue out the preciput.

PRECLUDI NON, pleading. A technical allegation contained in a replication which denies or confesses and avoids the plea. It is usually in the following form; "And the said A B, as to the plea of the said C D, by him secondly above pleaded, says, that he the said A B, by reason of any thing by the said C D, in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said C D, because he says that," &c. 2 Wils. 42; 1 Chit. Pl. 573.

PRECOGNITION, Scotch law. The examination of witnesses who were present at the commission of a criminal act, upon the special circumstances attending it, in order to know whether there is ground for a trial, and to serve for direction to the prosecutor. But the persons examined may insist on having their declaration cancelled before thev give testimony at the trial. Ersk. Princ. B. 4, t. 4, n. 49.

PRECONTRACT. An engagement entered into by a person, which renders him unable to enter into another; as a promise or covenant of marriage to be had afterwards. When made per verba de presenti, it is in fact a marriage, and in that case the party making it cannot marry another person.

PREDECESSOR. One who has preceded another.

2. This term is applied in particular to corporators who are now no longer such, and whose rights have been vested in their successor; the word ancestor is more usually applicable to common persons. The predecessor in a corporation stands in the same relation to the successor, that the ancestor does to the heir.

3. The term predecessor is also used to designate one who has filled an office or station before the present incumbent.

PRE−EMPTION, intern. law. The right of preemption is the right of a nation to detain the merchandise of strangers passing through her territories or seas, in order to afford to her subjects the preference of purchase. 1 Chit. Com. Law, 103; 1 Bl. Com. 287.

2. This right is sometimes regulated by treaty. In that which was made between the United States and Great Britain, bearing date the 10th day of November, 1794, ratified in 1795, it was agreed, art. 18, after mentioning that the usual munitions of war, and also naval materials should be confiscated as contraband, that "whereas the difficulty of agreeing on precise cases in which alone provisions and other articles not generally contraband may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise. It is further agreed that whenever any such articles so being contraband according to the existing laws of nations, shall for that reason be seized, the same shall not be confiscated, but the owners thereof

shall be speedily and completely indemnified; an the captors, or in their default−the government under whose authority they act, shall pay to the masters or owners of such vessel the full value of all articles, with a reasonable mercantile profit thereon, together with the freight, and also the damages incident to such detention." See Mann. Com. B. 3, c. 8.

3. By the laws of the United States the right given to settlers of public lands, to purchase them in preference to others, is called the preemption right. See act of L. April 29, 1830, 4 Sharsw. Cont. of Story, U. S. 2212.

PREFECT, French law. A chief officer invested with the superintendence of the administration of the laws in each department. Merl. Repert. h. t.

PREFERENCE. The paying or securing to one or more of his creditors, by an insolvent debtor, the whole or a part of their claim, to the exclusion of the rest. By preference is also meant the right which a creditor has acquired over others to be paid first out of the assets of his debtor, as, when a creditor has obtained a judgment against his debtor which binds the latter's land, he has a preference.

2. Voluntary preferences are forbidden by the insolvent laws of some of the states, and are void, when made in a general assignment for the benefit of creditors. Vide Insolvent; Priority.

PREGNANCY, med. jurisp. This is defined by medical writer; to be the state of a female who has within her ovary or womb, a fecundated germ which gradually becomes developed in the latter receptaale. Dunglison's Med. Diet. h. t.

2. The subject may be considered with reference to the signs of pregnancy; its duration; and the laws relating to it.

3. − _1. The fact that women sometimes conceal their state of pregnancy in order to avoid disgrace, and to destroy their offspring in its mature or immature state; and that in other cases to gratify the wishes of relations, the desire to deprive the legal successor of his just claims, to gratify their avarice by extorting money, and to avoid or delay execution, pregnancy is prtended, renders it necessary that an inquiry should take place to ascertain whether a woman has or has not been pregnant.

4. There are certain signs which usually indicate this state; these have been divided into those which affect the system generally, and those which affect the uterus.

5. − 1. The changes observed in the system from conception and pregnancy, are principally the following; namely, increased irritability of temper, melancholy, a languid cast of countenance, nausea, heart−burn, loathing of food, vomiting in the morning, an increased salivary discharge, feverish neat, with emaciation and costiveness, occasionally depravity of appetite, a congestion in the head, which gives rise to spots on the face, to headache, and erratic pains in the face and teeth. The pressure of increasing pregnancy, occasions protrusion of the umbilicus, and, sometimes, varicose tumors or anasarcous swellings of the lower extremities. The breasts also enlarge, an areola, or brown circle is observed around the nipples, and a secretion of lymph, composed of milk and water, takes place. It should be remembered that these do not occur in every pregnancy, but many of them in most cases.

6. − 2. The changes which affect the uterus, are, a suppression and cessation of the menses; an augmentation in size of the womb, which becomes perceptible between the eighth and tenth weeks; as time progresses, the enlargement continues about the middle of pregnancy, the woman feels the motion of the child, and this is called quickening. (q. v.) The vagina is also subject to alteration, as its glands throw out more mucus, and apparently prepare the parts for the passage of the foetus. Ryan's Med. Jur. 112, 113, 1 Beck's Med. Jur. 157, 158; 2 Dunglison's Human Physiology, 361. These are the general signs of pregnancy; it will be proper to consider them more minutely, though briefly, in detail.

7. − 1. The expansion and enlargement of the abdomen. This sign is not visible during the early months of pregnancy, and by art in the disposition of the dress and the use of stays, it may be concealed for a much longer period. The corpulency of the woman or the peculiarity of her form, may also contribute to produce the same effect. In common cases, where there is no such obstacle, this sign is generally manifest at the end of the fourth month, and continues till delivery. But the enlargement may originate from disease; from suppression or retention of the menses; tympanites; dropsy; or schirrosity of the liver and spleen. Patient and assiduous investigation and professional skill are requisite to pronounce as to this sign, and all these may fail. Fodere, tome i. p. 443. Cyclop. of Practical Medicnae, h. t. Cooper's Lect. vol. ii. p. 163.

8. − 2. Change in the state of the breasts. They are said to grow larger and more firm; but this enlargement occurs in suppressed menses, and sometimes at the period of the cessation of the menses; and sometimes they do

not enlarge till after delivery. The dark appearance of the areola is no safe criterion; and the milky fluid may occur without pregnancy.

9. − 3. The suppression of the menses. Although this usually follows conception, yet in some cases menstruation is carried on till within a few weeks of delivery. When the suppression takes place, it is not always the effect of impregnation; it may, and frequently does arise, from, disease. Some medical authors, however, deem the suppression to be a never failing consequence of conception.

10. − 4. The loss of appet ite, nausea, vomiting, &c. Although attendant upon pregnancy in many cases, are very equivocal signs.

11. − 5. The motion of the foetus in the mother's womb. In the early months of pregnancy this is wanting, but afterwards it can be ascertained. In cases of concealed pregnancy it cannot be ascertained from the declarations of the mother, and the examiner must discover it by other means. When the fcetus is alive, the sudden application of the hand, immediately after it has been dipped in cold water, over the regions of the uterus, will generally produce a motion of the foetus; but this is not an infallible test, the foetus may be dead, or there may be twins; in the first case, then, there will be no motion and in the latter, the motion is not felt sometimes until a late period. Vide Quickening.

12. − 6. Alteration in the state of the uterus. This is ascertained by what is technically called the touch. This is an examination, made with the hand of the examiner, of the uterus.

13. − 7. By the application of auscultation to the impregnated uterus, it is said certainty can be obtained. The indications of the presence of a living foetus in the womb, as derived from auscultation, are two: − 1. The action of the foetal heart This is marked by double pulsations; that of the foetus generally exceeds in frequency the maternal pulse. These pulsations may be perceived at the fifth, or between the fifth and sixth months. Their situation varies with that of the child. 2. The other auscultatory sign to denote the presence of the foetus has been variously denominated the placental bellows sound, the placental sound, and the utero placental souffflet. It is generally agreed that its seat is in the enlarged vessels of the portion of the uterus which is immediately connected with the placenta. According to Laennec, it is an arterial pulsation perfectly isochronous with the pulse of the mother, and accompanied by a rushing noise, resembling the blast of a pair of a bellows. It commonly begins to be beard with the aid of the stethoscope, (an instrument invented by Professor Laennec of Paris, for examining the chest) at the end of the fourth month of pregnancy. In the case of twins, Laennec detected the pulsation of two foetal hearts before delivery, by means of this instrument.

14. − 8. Another sign of pregnancy has been discovered, which is said by M. Jaquemin never to fail. It is the peculiar dark color which the mucous merabrane of the vagina acquires during this state. It was only after an examination of four thousand five hundred women that M. Jacquemin came to the conclusion which be formed of the certainty of this sign. Parent Duchatellet, De la Prostitution dans la ville de Paris, c, 3, _5.

15. It is, always difficult though perhaps not impossible to ascertain the presence of the foetus, and on the other band, many of the signs which would indicate such presence, have been known to fail. 1 Beck's Med. Jur. ch. Chit. Med. Jur. b. t.; Ryan's Med. Jur. 112, 113; Allison's Princ. of the Cr., Law of Scotl. ch. 3, p. 153; 1 Briand, Med. Leg. c. 3.

16.− _2. The duration of human pregnancy is not certain, and probably is not the same in every woman. It may perbaps be safely stated that forty weeks is the ordinary duration, though much discussion has taken place among medico−legal writers on this subject, and opinions fluctuate largely. 1 Beck's Med. Jur. 862. This is occasioned perhaps by the difficulty of ascertaining the time from which this period begins to run. Chit. Med. Jur. 409; Dewees, Midwifery, 125; 1 Paris & Fonbl. 218, 230, 245; 2 Dunglison's Human Physiology, 362; Rvan's Med. Jur. 121; 1 Fodere, M4d. Leg. _407−416.

17. − _3. The laws relating to pregnancy are to be considered, first, in reference to the fact of pregnancy; and, secondly, inrelation to its duration.

18. − 1. As to the fad of pregnancy. There are two cases where the fact whether a woman is or has been pregnant is of importance; when it is supposed she pretends pregnancy, and when she is charged with concealing it.

19. − 1st. Pretended pregnancy may arise from two causes: the one when a widow feigns herself with child, in order to produce a supposititious heir to the estate. In this case in England the heir presumptive may have a writ de ventre inspiciendo, to examine whether she be with child or not; and if she be, to keep her under proper restraint until delivered; but if, upon examination, the widow be found not pregnant, the presumptive heir shall be admitted to the inheritance, though liable to lose it again on the birth of a child within forty weeks from the death

of the hushand. 1 Bl. Com. 456; Cro. Eliz. 566; 4 Bro. C. C. 90; 2 P. Wms. 591; Cox's C. C. 297. In the civil law there was a similar practice. Dig. 25, 4.

20. The second cause of pretended pregnancy occurs when a woman has been sentenced to death, for the commission of a crime. At common law, in case this plea be made before execution, the court must direct a jury of twelve matrons, or discreet women, to ascertain the fact, and if they bring in their verdict quick with child, execution shall be staid generally till the next session of the court, and so from session to session till either she be delivered, or proves by the lapse of time, not to have been with child at all. 4 Bl. Com. 394, 395; 1 Bay, 487. It is proper to remark that a verdict of the matrons that the woman is pregnant is not sufficient, she must be found to be quick with child. (q. v.)

21. Whether under the English law a woman would be hanged who could be proved to be privement enceinte, beyond all doubt, is not certain; but in this country, it is presumed if it could be made to appear, indubitably: that the woman was pregnant, though not quick with child, the execution would be respited until after delivery. Fatal errors have been made by juries of matrons. A case occurred at Norwich in England in the month of March, 1833, of a murderess who pleaded pregnancy. Twelve married women were impanneled on the jury; after an hour's examination, they returned a verdict that she was not quick with child. She was ordered for execution. Fortunately three of the principal surgeons in the place, fearing some error, waited upon the convict and examined her; they found her not only pregnant, but quick with child. The matter was represented to the judge, who respited the execution, and on the 11th day of July she was safely delivered of a living child. London Medical Gazette, vol. xii. p. 24, 585.

22. In New York it is provided by legislative enactment, (2 Rev. Stat. 658,) that "if a female convict, sentenced to the punishment of death, be pregnant, the sheriff shall summon a jury of six physicians, and shall give notice to the district attorney, who shall have power to subpoena witnesses. If, on such inquisition, it shall appear that the female is quick with child, the sheriff shall suspend the execution, and transmit the inquisition to the governor. Whenever the governor shall be satisfied that she is no longer quick with child, he shall issue Iiis warrant for execution, or commute it, by imprisonment for life in the state prison."

23. By the laws of. Franco, "if a woman condemned to death declares herself to be pregnant, and it is verified that she is pregnant, she shall not suffer her punishment till after her delivery. Code Penal, art. 27.

24. − 2d. Concealed pregnancy seldom takes place except for the criminal purpose of destroying the life of the foetus in utero, or of the child immediately after its birth. The extreme facility of extinguishing the infant life, at the time, or shortly after birth,, and the experienced difficulty of proving this unnatural crime, has induced the passage of laws, in perhaps all the states, as well as in England and other countries, calculated to facilitate the proof, land also to punish the very act of concealment of pregnancy and death of the child, when, if born alive, it would have been a bastard. The English statute of 21 Jac. 1, c. 27, required that any mother of such child who had endeavored to conceal its birth, should prove, by one witness at least, that the child was actually born dead; and for want of such proof it arrived at the forced conclusion that the mother murdered it. But it was considered a blot upon even the English code, and it was therefore repealed by 43 Geo. III. c. 58, s. 3. An act of assembly of Pennsylvania, of the 31st May, 1781, made the concealment of the death of a bastard child conclusive evidence to convict the mother of murder; which was repealed by the act of 5th of April, 1790, s. 6, which declared that the constrained presumption that the child whose death is concealed, was therefore murdered by the mother, shall not be sufficient to convict the party indicted, without probable presumptive proof is given that the child was born alive. The law was further modified by the act of 22d of April, 1794, s. 18, which declares that the concealment of the death of any such child shall not be conclusive evidence to convict the party indicted of the murder of her child, unless the circumstances attending it be such as shall satisfy the mind of the jury, that she did wilfully and maliciously troy take away the life of such a child. The last mentioned act, section 17, punishes the concealment of the death of a bastard child by fine and imprisonment. See, for the law of Connecticut on the subject, 2 Swift's Digest, 296. See Alison's Principles of the Criminal Law of Scotland, ch. 3.

26. − 2. As to the duration of pregnancy. Lord Coke lays down the peremptory rule that forty weeks is the longest time allowed by law for gestation. Co. Litt. 123. There does not, however, appear to be any time fixed by the law as to the duration of pregnancy. Note by Hargr. & Butler, to 1 Inst. 123, b: 1 Rolle's Ab. 356, 1. 10; Cro. Jac. 541; Palm. 9.

27. The civil code of Louisiana provides that the child capable of living, which is born before the one hundred and eightieth day after the marriage, is not presumed to be the child of the hushand; every child born alive more

than six months after conception, is presumed to be capable of living. Art. 205. The same rule applies with respect to the child born three hundred days after the dissolution of the marriage, or after sentence of separation e and board. Art. 206. The Code Civil of France contains the following provision. The child conceived during the marriage, has the hushand for its father. Nevertheless the hushand may disavow the child, if he can prove that during the time that has elapsed between the three hundredth and the one hundred and eightieth before its birth he was prevented either by absence, or in consequence of some accident, or on account of some physical impossibility, from cohabiting with his wife. Art. 312. A child born before the one hundred and eightieth day after the marriage cannot be disavowed by the hushand in the following cases: − l. When he had knowledge of the pregnancy before the marriage; 2. When he has assisted in writing the act of birth, [a certificate stating the birth and sex of the child, the time when born, &c. required by law to be filed with a proper officer and recorded,] and when that act has been signed by him, or when it contains his declaration that he cannot sign;

3. When the child is not declared capable of living. Art. 314. And the legitimacy of a child born three hundred days after the dissolution of the marriage may be contested. Art. 315.

PREGNANT, pleading. A fulness in the pleadings which admits or involves a matter which is favorable to the opposite party. 2. It is either an affirmative pregnant, or negative pregnant. See Affirmative pregnant; Negative pregnant.

PREJUDICE. To decide beforehand; to lean in favor of one side of a cause for some reason or other than its justice.

2. A judge ought to be without prejudice, and he cannot therefore sit in a case where he has any interest, or when a near relation is a partt, or where he has been of counsel for one of the parties. Vide Judge.

3. In the civil law prejudice signifies a tort or injury; as the act of one man should never prejudice another. Dig. 60, 17, 74.

PRELATE. The name of an ecclesiastical officer. There are two orders of prelates; the first is composed of bishops, and the second, of abbots, generals of orders, deans, &c.

PRELEVEMENT, French law. The portion which a partner is entitled to take out of the assets of a firm before any sion shall be made of the remainder of the assets, between the partners.

2. The partner who is entitled to a prelevement is not a creditor of the partnership; on the contrary he is a part owner for if the assets should be deficient, a creditor has a preference over the partner; on the other hand, should the assets yield any profit, the partner is entitled to his portion of it, whereas the creditor is entitled to no part of it, but he has a right to charge interest, when he is in other respects entitled to it.

PREHENSION. The lawful taking of a thing with an intent to, assert a right in it.

PRELIMINARY. Something which precedes, as preliminaries of peace, which are the first sketch of a treaty, and contain the principal articles on which both parties are desirous of concluding, and which are to serve as the basis of the treaty.

PREMEDITATION. A design formed to commit a crime or to do some other thing before it is done.

2. Premeditation differs essentially from will, which constitutes the crime, because it supposes besides an actual will, a deliberation and a continued persistance which indicate more perversity. The preparation of arms or other instruments required for the execution of the crime, are indications of a premeditation, but are not absolute proof of it, as these preparations may have been intended for other purposes, and then suddenly changed to the performance of the criminal act. Murder by poisoning must of necessity be done with premeditation. See Aforethought; Murder.

PREMISES. that which is put before. The word has several significations; sometimes it means the statements which have been before made; as, I act upon these premises; in this sense, this word may comprise a variety of subjects, having no connexion among themselves; 1 East, R. 456; it signifies a formal part of a deed; and it is made to designate an estate.

PREMISES, estates. Lands and tenements are usually, called premises, when particularly spoken of; as, the premises will be sold without reserve. 1 East, R. 453.

PREMISES, conveyancing. That part in the beginning of a deed, in which are set forth the names of the parties, with their titles ana additions, and in which are recited such deeds, agreements, or matters of fact, as are necessary to explain the reasons upon which the contract then entered into is founded; and it is here also the consideration on which it is made, is set down, and the certainty of the thing granted. 2 Bl. Com. 298. The technical meaning of the premises in a deed, is every thing which precedes the habendum. 8 Mass. R. 174; 6 Conn. R. 289. Vide Deed.

PREMISES, equity pleading. That part of a bill usually denominated the stating part of the bill. It contains a narrative of the facts and circumstances of the plaintiff's case, and the wrongs of which he complains, and the names of the persons by whom done, and against whom he seeks redress. Coop. Eq. Pl..9; Bart. Suit in equity, 27; Mitf. Eq. Pl. by Jeremy, 43; Story, Eq. Pl. _27; 4 Bouv, Inst. n. 4158.

PREMIUM, contracts. The consideration paid by the insured to the insurer for making an insurance. It is so called because it is paid primo, or before the contract shall take effect. Poth. h. t. n. 81; Marah. Inst. 234.

2. In practice, however, the premium is not always paid when the policy is underwritten; for insurances are frequently effected by brokers, and open accounts are kept between them and the underwriters, in which they make themselves debtors for all premiums;, and sometimes notes or bills are given for the amount of the premium.

3. The French writers, when they speak of the consideration given for maritime loans, employ a variety of words in order to distinguish it according to the nature of the case. Thus, 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 a voyage, and here the risk is the principal object which they have in view. When the sum is a percentage on the money lent, they denominate it exchange, considering it in the light of money lent in 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. Vide Park, Ills. h. t. Poth. h. t.; 3 Kent, Com. 285; 15 East, R. 309, Day's note, and the cases there cited.

PREMIUM PUDICITIAE, contracts. Literally the price of chastity.

2. This is the consideration of a contract by which a man promises to pay to a woman with whom he has illicit intercourse a certain sum of money. When the contract is made as the payment of past cohabitation, as between the parties, it is good, and will be enforced against the obligor, his heirs, executors and administrators, but it cannot be paid, on a deficiency of assets, until all cred itors are paid, though it has a preference over the heir, next of kin, or devisee. If the contract be for future cohabitation, it is void. Chit. Contr. 215; 1 Story, Eq. Jur. _296; 5 Ves. 286; 2 P. Wms. 432; 1 Black. R. 517; 3 Burr. 1568; 1 Fonbl. Eq, B. 1, a. 4, _4, and notes s and y; 1 Ball & Beat. 360; 7 Ves. 470; 11 Ves. 535; Rob. Fraud. Conv. 428; Cas. Temp. Talb. 153; and the cases there cited; 6 Ham. R. 21; 5 Cowen, R. 253; Harper, R. 201; 3 Mont. R. 35; 2 Rev. Const. Ct; 279; 11 Mass. R. 368; 2 N. & M. 251.

PRENDER or PRENDRE. To take. This word is used to signify the right of taking a thing before it is offered,; hence the phrase of law, it lies in render, but not in prender. Vide A prendre; and Gale and Whatley on Easements, 1.

PROENOMEN. The first or Christian name of a person; Benjamin is the proenomen of Benjamin Franklin. See Cas. temp. Hard. 286; 1 Tayl. 148.

PREPENSE. The same as aforethought. (q. v.) Vide 2 Chit. Cr. Law, *784.

PREROGATIVE, civil law. The privilege, preeminence, or advantage which one person has over another; thus a person vested with an office, is entitled to all the rights, privileges, prerogatives, &c. which belong to it.

PREROGATIVE, English law. The royal prerogative is an arbitrary power vested in the executive to do good and not evil. Rutherf. Inst. 279; Co. Litt. 90; Chit. on Prerog.; Bac. Ab. h. t.

PREROGATIVE COURT, eccles. law. The name of a court in England in which all testaments are proved and administrations granted, when the deceased has left bona notabilia in the province in some other diocese than that in which he died. 4 Inst. 335.

2. The testamentary courts of the two archbishops, in their respective provinces, are styled prerogative courts, from the prerogative of each archbishop to grant probates and administrations, where there are bona, notabilia; but still these are only inferior and subordinate jurisdictions; and the style of these courts has no connexion with the royal prerogative. Derivatively, these courts are the king's ecclesiastical courts; but immediately, they are only the courts of the ecclesiastical ordinary. The ordinary, and not the crown, appoints the judges of these courts; they are subject to the control of the king's courts of chancery and common law, in case they exceed their jurisdiction; and they are subject in some instances to the command of these courts, if they decline to exercise their jurisdiction, when by law they ought to exercise it. Per Sir John Nicholl, In the Goods of George III.; 1 Addams, R. 265; S. C. 2 Eng. Eccl. R. 112.

PRESCRIPTIBLE. That which is subject to prescription.

PRESCRIPTION. The manner of acquiring property by a long, honest, and uninterrupted possession or use

during the time required by law. The possession must have been possessio longa, continua, et pacifica, nec sit ligitima interruptio, long, continued, peaceable, and without lawful interruption. Domat, Loix Civ. liv. 3, t. 29, s. 1; Bract. 52, 222, 226; Co. Litt. 113, b; Pour pouvoir prescire, says the Code Civil, 1. 3, t. 20, art. 22, 29, il faut une possession continue et non interrompue, paisible, publique, et a titre de proprietaire. See Knapp's R. 79.

2. The law presumes a grant before the time of legal memory when the party claiming by prescription, or those from whom he holds, have had adverse or uninterrupted possession of the property or rights claimed by prescription. This presumption may be a mere fiction, the commencement of the user being tor−tious; no prescription can, however, be sustained, which is not consistent with such a presumption.

3. Twenty years uninterrupted user of a way is prima facie evidence of a prescrptive right. 1 Saund. 323, a; 10 East, 476; 2 Br. & Bing. 403; Cowp. 215; 2 Wils. 53. The subject of prescription are the several kinds of incorporeal rights. Vide, generally, 2 Chit. Bl. 35, n. 24; Amer. Jurist, No. 37, p. 96; 17 Vin. Ab. 256; 7 com. Dig. 93; Rutherf. Inst. 63; Co. Litt. 113; 2 Conn. R. 584; 9 conn. R. 162; Bouv. Inst. Index, h. t.

4. The Civil Code Louisiana, art. 3420, defines a prescription to be a manner of acquiring property, or of discharging debts, by the effect of time, and under the conditions regulated by law. For the law relating to prescription in that state, see Code, art. 8420 to 3521. For the difference between the meaning of the term prescription as understood by the common law, and the same term in the civil law, see 1 Bro. Civ. Law, 246.

5. The prescription which has the effect to liberate a creditor, is a mere bar which the debtor may oppose to the creditor, who has neglected to exercise his rights, or procured them to be acknowledged during the time prescribed by law. The debtor acquires this right without any act on his part, it resalts entirely from the negligence of the creditor. The prescription does not extinguish the debt, it merely places a bar in the hands of the debtor, which he may use or not at his choice against the creditor. The debtor may therefore abandon this defence, which has been acquired by mere lapse of time, either by paying the debt, or acknowledging it. If he pay it, he cannot recover back the money so paid, and if he acknowledge it, he may be constrained to pay it. Poth. Intr. au titre xiv. des Prescriptions, Bect. 2. Vide Bouv. Inst. Theo. pars prima, c. 1, art. 1, _4, s. 3; Limitations.

PRESENCE. The existence of a person in a particular place.

2. In many contracts and judicial proceedings it is necessary that the parties should be present in order to reader them valid; for example, a party to a deed when it is executed by himself, must personally acknowledge it, when such acknowledgment is required by law, to give it its full force aud effect, and his presence is indispensable, unless, indeed, another person represent him as his attoruey, having authority from him for that purpose.

3. In the criminal law, presence is actual or constructive. When a larceny is committed in a house by two men, united in the same design, and one of them goes into the house, arid commits the crime, while the other is on the outside watching to prevent a surprise, the former is actually, an the latter constructively, present.

4. It is a rule in the civil law, that he who is incapable of giving his consent to an act, is not to be considered present, although he be actually in the place; a lunatic, or a man sleeping, would not therefore be considered present. Dig. 41, 2, 1, 3. And so, if insensible; 1 Dougl. 241; 4 Bro. P. R. 71; 3 Russ. 441; or if the act were done secretly so that he knew nothing of it. 1 P. Wms. 740.

5. The English statute of fraud, _5, directs that all devises and bequests of any lands or tenements shall be attested or subscribed in the presence of said devisor. Under this statute it has been decided that an actual presence is not indispensable, but that where there was a constructive presence it was sufficient; as, where the testatrix executed the will in her carriage stand− ing in the street before the office of her solicitor, the witness retired into the office to attest it, and it being proved that the carriage was accidentally put back, so that she was in a situation to see the witness sign the will through the window of the office. Bro. Ch. C. 98; see 2 Curt. R. 320; 2 Salk. 688; 3 Russ. R. 441; 1 Maule & Selw. 294; 2 Car.& P. 491 2 Curt. R. 331. Vide Constructive.

PRESENT. A gift, or wore properly the thing given. It is provided by the constitution of the United States, art. 1, s. 9, n, 7, that "no person holding any office of profit or trust under them, [the United States] shall, without the consent of congress, accept of any present, emolument, or office, or title of any kind whatever, from any king, prince, or foreign state."

PRESENTS. This word signifies the writing then actually made and spoken of; as, these presents; know all men by these presents, to all to whom these presents shall come.

PRESENTATION, eccl. law. The act of a patron offering his clerk to the bishop of the diocese to be instituted in a church or benefice.

PRESENTEE, eccles. law., A clerk who has been presented by his patron to a bishop in order to be instituted in a

church.

PRESENTMENT, crim. law, practice. The written notice taken by a grand jury of any offence, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the government; 4 Bl. Com. 301; upon such presentment, when 'proper, the officer emloyed to prosecute, afterwards frames a till of indictment, which is then sent to the grand jury, and they find it to be a true bill. In an extended sense presentments include not only what is properly so called, but also inquisitions of office, and indictments found by a grand jury. 2 Hawk. c. 25, s. 1.

2. The difference between a presentment and an inquisition, (q. v.) is this, that the former is found by a grand jury authorized to inquire of offences generally, whereas the latter is an accusation found by a jury specially returned to inquire concerning the particular offence. 2 Hawk. c. 25, s. 6. Vide, generally, Com. Dig. Indictment, B Bac. Ab. Indictment, A 1 Chit. Cr. Law, 163; 7 East, R. 387 1 Meigs. 112; 11 Humph. 12.

3. The writing which contains the accusation so presented by a grand jury, is also called a presentment. Vide 1 Brock. C. C. R. 156; Grand Jury.

PRESENTMENT, contracts. The production of a bill of exchange or promissory note to the party on whom the former is drawn, for his acceptance, or to the person bound to pay either, for payment.

2. The holder of a bill is bound, in order to hold the parties to it responsible to him, to present it in due time for acceptance, and to give notice, if it be dishonored, to all tho parties he intends to hold liable. And when a bill or note becomes payable, it must be presented for payment.

3. The principal circumstances concerning presentment, are the person to whom, the place where, and the time when, it is to be made.

4. − 1. In general the presentment for payment should be made to the maker of a note, or the drawee of a bill for acceptance, or to the acceptor, for payment; but a presentment made at a particular place, when pavable there, is in general sufficient. A personal demand on the drawee or acceptor is not necessary; a demand at his usual place of residence of his wife or other agent is sufficient. 2 Esp. Cas. 509; 5 Esp. Cas. 265 Holt's N. P. Cas. 313.

5. − 2. When a bill or note is made payable at a particular place, a presentment, as we have seen, may be made there; but when the acceptance is general, it must be presented at the house or place of business of the acceptor. 3 Kent, Com. 64, 65.

6. − 3. In treating of the time for presentment, it must be considered with reference, 1st. To a presentment for acceptance. 2d. To one for payment. 1st. When the bill is payable at sight, or after sight, the presentment must be made in reasonable time; and what this reasonable time is depends upon the circumstances of each case. 7 Taunt. 397; 1 Dall. 255; 2 Dall. 192; Ibid. 232; 4 Dall. 165; Ibid. 129; 1 Yeates, 531; 7 Serg. & Rawle, 324; 1 Yeates 147. 2d. The presentment of a note or bill for payment ought to be made on the day it becomes due, and notice of non−payment given, otherwise the holder will lose the security of the drawer and endorsers of a bill and the endorsers of a promissory note, and in case the note or bill be payable at a particular place and the money lodged there for its payment, the holder would probably have no recourse against the maker or acceptor, if he did not present them on the day, and the money should be lost. 5 Barn. & Ald. 244. Vide 5 Com. Dig. 134; 2 John. Cas. 75; 3 John. R. 230; 2 Caines' Rep. 343; 18 John. R. 230; 2 John. R. 146, 168, 176; 2 Wheat. 373; Chit. on Bills, Index, h. t.; Smith on Mer. Law, 138; Byles on Bills, 102.

7. The excuses for not making a presentment are general or applicable to all persons, who are endorsers; or they are special and applicable to the particular' endorser only.

8. − 1. Among the former are, 1. Inevitable accident or overwhelming calamity; Story on Bills, _308; 3 Wend. 488; 2 Smith's R. 224. 2. The prevalence of a malignant disease, by which the ordinary operations of business are suspended. 2 John. Cas. 1; 3 M. & S. 267; Anth. N. P. Cas. 35. 3. The breaking out of war between the country of the maker and that of the holder. 4. The occupation of the country where the note is payable or where the parties live, by a public enemy, which suspends commercial operations and intercourse. 8 Cranch, 155 15 John. 57; 16 John. 438 7 Pet. 586 2 Brock. 20; 2 Smith's R. 224. 51. The obstruction of the ordinary negotiations of trade by the vi's maj or. 6. Positive interdictions and public regulations of the state which suspend commerce and intercourse. 7. The utter impracticability of finding the maker, or ascertaining his place of residence. Story on Pr. N. 205, 236, 238, 241, 264.

9. − 2. Among the latter or special excuses for not making a presentment may be enumerated the following: 1. The receiving the note by the holder from the payee, or other antecedent party, too late to make a due presentment; this will be an excuse as to such party. 16 East, 248; 7 Mass. 483; Story, P. N. __201, 265; 11

Wheat. 431 2 Wheat. 373. 2. The note being an accommodation note of the maker for the benefit of the endorser. Story on Bills, _370; see 2 Brock. 20; 7 Harr. & J. 381; 7 Mass. 452; 1 Wash. C. C. R. 461; 2 Wash. C. C. R. 514; 1 Rayw. 271; 4 Mason, 113; 1 Har. & G. 468; 1 Caines, 157; 1 Stew. 175; 5 Pick. 88; 21 Pick. 327. 3. A special agreement by which the endorser waives the presentment. 8 Greenl. 213; 11 Wheat. 629; Story on Bills, __371, 373; 6 Wheat. 572. 4. The receiving security or money by an endorser to secure himself from loss, or to pay the note at maturity. In this case, when the indemnity or money is a full security for the amount of the note or bill, no presentment is requisite. Story on Bills, _374; Story on P. N. _281; 4 Watts, 328.; 9 Gill & John. 47; 7 Wend. 165; 2 Greenl. 207; 5 Mass. l70; 5 Conn. 175. 5. The receiving the note by the holder from the endorser, as a collateral security for another debt. Story on Pr. Notes, _284; Story on Bills, _372; 2 How. S. C. R. 427, 457.

10. A want of presentment may be waived by the party to be affected, after a full knowledge of the fact. 8 S. & R. 438; see 6 Wend. 658; 3 Bibb, 102; 5 John. 385; 4 Mass. 347; 7 Mass. 452; Wash. C. C. R. 506; Bac. Ab. Merchant, &c. M. Vide, generally, 1 Hare & Wall. Sel. Dec. 214, 224. See Notice of dishonor.

PRESERVATION. keeping safe from harm; avoiding injury. This term always presupposes a real or existing danger.

2. A jettison, which is always for the preservation of the remainder of the cargo, must therefore be made only when there is a real danger existing. See Average; Jettison.

PRESIDENT. An officer of a company who is to direct the manner in which business is to be transacted. From the decision of the president there is an appeal to the body over which he presides.

PRESIDENT OF THE UNITED STATES OF AMERICA. This is the title of the executive officer of this country.

2. The constitution directs that the executive power shall be vested in a president of the United States of America. Art. 2, s. 1.

3. This subject will be examined by considering, 1. His qualifications. 2. Hi's election. 3. The duration of his office. 4. His compensation. 5. His powers.

4. − _1. No person except a natural born a citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president neither shall any person be eligible to that office who shall not have attained the age of thirty−five years, and been fourteen years a resident within the United States. Art. 2, s. 1, n. 5. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice−president; and the congress may by law provide for the removal, death, resignation, or inability both of the president and vice−president, declaring what officer shall then act as president and such officer shall act accordingly, until the disability be removed, or a president shall be elected. Art. 2, s. 1, n. 6.

5. − _2. He is chosen by electors of president. (q. v.) See Const. U. S. art. 2, s. 1, n. 2, 3, and 4; 1 Kent, Com. 273 Story on the Constit. _1447, et seq. After his election and before he enters on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States." Article 2, s. 1, n. 8 and 9.

6. − _3. He holds his office for the term of four years; art. 2, s. 1, n. 1; he is reeligible for successive terms, but no one has ventured, contrary to public opinion, to be a candidate for a third term.

7. − _4. The president shall, at stated times, receive for his services, a compensation which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them. Art. 2, sect. 1, n. 7. The act of the 24th September, 1789, ch. 19, fixed the salary of the president at twenty−five thousand dollars. This is his salary now.

8. − _5. The powers of the president are to be exercised by him alone, or by him with the concurrence of the senate.

9. − 1. The constitution has vested in him alone, the following powers: be is commander−in−chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officers of each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have the power to grant reprieves and pardons for offences against the United States, except in cases of impeachluent. Art. 2, s. 2, n. 2. He may appoint all officers of the United States, whose appointments are not otherwise provided for in the constitution, and which shall be established by law, when congress shall vest the appointment of such officers in

the president alone. Art. 2, s. 2, n. 2. He shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session. Art. 2, sect. 2, n. 3. He shall from time to time give congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all officers of the United States.

10. − 2. His power, with the concurrence of the senate, is as follows: to make treaties, provided two−thirds of the senators present concur; nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not provided for in the constitution, and which have been established by law; but the congress may by law vest the appointment of such inferior officers, as they shall think proper, in the president alone, in the courts of law, or in the heads of departments. Art. 2, s. 2, n. 2. Vide 1 Kent, Com. Lect. 13; Story on the Const. B. 3, ch. 36; Rawle on the Const. Index, h. t.; Serg. Const. L. Index, h. t.

PRESS. By a figure this word signifies the art of printing. The press is free.

2. All men have a right to print and publish whatever they may deem proper, unless by doing so they infringe the rights of another, as in the case of copyrights, (q. v.) when they may be enjoined. For any injury they may commit against the public or individuals they may be punished, either by indictment, or by a civil action at the suit of the party injured, when the injury has been committed against a private individual. Vide Const. of the U. S. Amendm. art. 1, and Liberty of the Press.

PRESUMPTION, evidence. An inference as to the existence of one fact, from the existence of some other fact, founded on a previous experience of their connexion. 3 Stark. Ev. 1234; 1 Phil. Ev. 116; Gilb. Ev. 142; Poth. Tr. des. Ob. part. 4, c. 3, s. 2, n. 840. Or it, is an opinion, which circumstances, give rise to, relative to a matter of fact, which they are supposed to attend. Menthuel sur les Conventions, liv. 1, tit. 5.

2. To constitute such a presumption, a previous experience of the connexion between the known and inferred facts is essential, of such a nature that as soon as the existence of the one is established, admitted or assumed, an inference as to the existence of the other arises, independently of any reasoning upon the subject. It follows that an inference may be certain or not certain, but merely, probable, and therefore capable of being rebutted by contrary proof.

3. In general a presumption is more or less strong according as the fact presumed is a necessary, usual or infrequent consequence of the fact or facts seen, known, or proven. When the fact inferred is the necessary consequence of the fact or facts known, the presumption amounts to a proof when it is the usual, but not invariable consequence, the presumption is weak; but when it is sometimes, although rarely,the consequence of the fact or facts known, the presumption is of no weight. Menthuel sur les Conventions, tit. 5. See Domat, liv. 9, tit. 6 Dig. de probationibus et praesumptionibus.

4. Presumptions are either legal and artificial, or natural.

5. − 1. Legal or artificial presumptions are such as derive from the law a technical or artificial, operation and effect, beyond their mere natural. tendency to produce belief, and operate uniformly, without applying the process of reasoning on which they are founded, to the circumstances of the particular case. For instance, at the expiration of twenty years, without payment of interest on a bond, or other acknowledgment of its existence, satisfaction is to be presumed; but if a single day less than twenty years has elapsed, the presumption of satisfaction from mere lapse of time, does not arise; this is evidently an artificial and arbitrary distinction. 4 Greenl. 270; 10 John. R. 338; 9 Cowen, R. 653; 2 M'Cord, R. 439; 4 Burr. 1963; Lofft, 320; 1 T. R. 271; 6 East, R. 215; 1 Campb. R. 29. An example of another nature is given under this head by the civilians. If a mother and her infant at the breast perish in the same conflagration, the law presumes that the mother survived, and that the infant perished first, on account of its weakness, and on this ground the succession belongs to the heirs of the mother. See Death, 9 to 14.

6. Legal presumptions are of two kinds: first, such as are made by the law itself, or presumptions of mere law; secondly, such as are to be made by a jury, or presumptions of law and fact.

7. − 1st. Presumptions of mere law, are either absolute and conclusive; as, for instance, the presumption of law that a bond or other specialty was executed upon a good consideration, cannot be rebutted by evidence, so long as the instrument is not impeached for fraud; 4 Burr. 2225; or they are not absolute, and may be rebutted evidence;

for example, the law presumes that a bill of exchange was accepted on a good consideration, but that presumption may be rebutted by proof to the contrary.

8. − 2d. Presumptions of law and fact are such artificial presumptions as are recognized aud warranted by the law as the pro er inferences to be made by juries under particular circumstances; for instance, au unqualified refusal to deliver up the goods on demand made by the owner, does not fall within any definition of a conversion, but inasmuch as the detention is attended with all the evils of a conversion to the owner, the law makes it, in its effects and consequences, equivalent to a conversion, by directing or advising the jury to infer a conversion from the facts of demand and refusal.

9. − 2. Natural presumptions depend upon their own form and efficacy in generating belief or conviction on the mind, as derived from these connexions which are pointed out by experience; they are wholly independent of any artificial connexions and relations, and differ from mere presumptions of law in this essential respect, that those depend, or rather are a branch of the particular system of jurisprudence to which they belong; but mere natural presumptions are derived wholly by means of the common experience of mankind, from the course of nature and the ordinary habits of society.

Vide, generally, Stark. Ev. h. t.; 1 Phil. Ev. 116; Civ. Code of Lo. 2263 to 2267; 17 Vin. Ab. 567; 12 Id. 124; 1 Supp. to Ves. jr. 37, 188, 489; 2 Id. 51, 223, 442; Bac. Ab. Evidence, H; Arch. Civ. Pl. 384; Toull. Dr. Civ. Fr. liv. 3, t. 3, o. 4, s. 3; Poth. Tr. des Obl. part 4, c. 3, s. 2; Matt. on Pres.; Gresl. Eq. Ev. pt. 3, c. 4, 363; 2 Poth. Ob. by Evans, 340; 3 Bouv. Inst. n. 3058, et seq.

PRESUMPTIVE HEIR. One who, if the ancestor should die immediately, would under the present circumstances of things be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother, who is the presumptive heir, may be defeated by the birth of a child to the ancestor. 2 Bl. Com. 208.

PRET A USAGE. Loan for use. This phrase is used in the French law instead of commodatum. (q. v.)

PRETENTION, French law. The claim made to a thing which a party believes himself entitled to demand, but which is not admitted or adjudged to be his.

2. The words rights, actions and pretensions, are usually joined, not that they are synonymous, for right is something positive and certain, action is what is demanded, while pretention is sometimes not even accompanied by a demand.

PRETERITION, civil law. The omission by a testator of some one of his heirs who is entitled to a legitime, (q. v.) in the succession.

2. Among the Romans, the preterition of children when made by the mother were presumed to have been made with design; the preterition of sons by any other testator was considered as a wrong and avoided the will, except the will of a soldier in service, which was not subject to so much form.

PRETEXT. The reasons assigned to justify an act, which have only the appearance of truth, and which are without foundation; or which if true are not the true reasons for such act. Vattel, liv. 3, c. 3, 32.

PRETIUM AFFECTIONIS. An imaginary value put upon a thing by the fancy of the owner in his affection for it, or for the person from whom he obtained it. Bell's Dict. h. t.

2. When an injury has been done to an article, it has been questioned whether in estimating the damage there is any just ground in any case, for admitting the pretium affectionis? It seems that when the injury has been done accidentally by culpable negligence, such an estimation of damages would be unjust, but when the mischief has been intentional, it ought to be so admitted. Kames on Eq. 74, 75.

PREVARICATION. Praevaricatio, civil law. The acting with unfaithfulness and want of probity. The term is applied principally to the act of concealing a crime. Dig. 47, 15, 6.

PREVENTION, civil and French law. The right of a judge to take cognizance of an action over which he has concurrent jurisdiction with another judge.

2. In Pennsylvania it has been ruled that a justice of the peace cannot take cognizance of a cause which has been previously decided by another justice. 2 Dall. 77; Id. 114.

PRICE, contracts. The consideration in money given for the purchase of a thing.

2. There are three requisites to the quality of a price iii order to make a sale.

3. − 1. It must be serious, and such as may be demanded: if, therefore, a person were to sell me an article, and by the agreement, reduced to writing, he were to release me from the payment, the transaction would no longer be a sale, but a gift, Poth. Vente, n. 18.

4. − 2. The second quality of a price is, that the price be certain and determinate; but what may be rendered certain is considered as certain if, therefore, I sell a thing at a price to be fixed by a third person, this is sufficiently certain, provided the third person make a valuation and fix the price. Poth. Vente, n. 23, 24.

5. − 3. The third quality of a price is, that it consists in money, to be paid down, or at a future time, for if it be of any thing else, it will no longer be a price, nor the contract a sale, but exchange or barter. Poth. Vente, n. 30; 16 Toull. n. 147.

6. The true price of a thing is that for which things of a like nature and quality are usually sold in the place where situated, if real property; or in the place where exposed to sale, if personal. Poth. Contr. de Vente, n. 243. The first price or cost of a thing does not always afford a sure criterion of its value. It may have been bought very dear or very cheap. Marsh. Ins. 620, et seq.; Ayliffe's Pand. 447; Merlin, Repert. h. t.; 4 Pick. 179; 8 Pick. 252; 16 Pick. 227.

7. In a declaration in trover it is usual, when the chattel found is a living one, to lay it as of such a price when dead, of such a value. 8 Wentw. Pl. 372, n; 2 Lilly's Ab. 629. Vide Bouv. Inst. Index, h. t.; Adjustment; Inadequacy of price; Pretium offectionis.

PRICE CURRENT. The price for which goods, usually sell in the market. A printed newspaper containing a list of such prices is also called a price current.

PRIMA FACIE. The first blush; the first view or appearance of the business; as, the holder of a bill of exchange, indorsed in blank, is prima facie its owner.

2. Prima facie evidence of a fact, is in law sufficient to establish the fact, unless rebutted. 6 Pet. R. 622, 632; 14 Pet. R. 334. See, generally, 7 J. J. Marsh, 425; 3 N. H. Rep. 484; 3 Stew. & Port. 267; 5 Rand. 701; 1 Pick. 332; 1 South. 77; 1 Yeates, 347; Gilp. 147; 2 N. & McCord, 320; 1 Miss. 334; 11 Conn. 95; 2 Root, 286; 16 John. 66, 136; 1 Bailey, 174: 2 A. K. Marsh. 244. For example, when buildings are fired by sparks emitted from a locomotive engine passing along the road, it is prima facie evidence of negligence on the part of those who have the charge of it. 3 Man. Gr. & Sc. 229.

PRIMA TONSURA. A grant of a right to have the first crop of grass. 1 Chit. Pr. 181.

PRIMAGE, merc. law. A duty payable to the master and mariner of a ship or vessel; to the master for the use of his cables and ropes to discharge the goods of the merchant; to the mariners for lading and unlading in any port or haven. Merch. Dict. h. t.; Abb. on Ship. 270.

2. This payment appears to be of very ancient date, and to be variously regulated in different voyages and trades. It is sometimes called the master's hat money. 3 Chit. Com. Law, 431.

PRIMARY. That which is first or principal; as primary evidence, or that evidence which is to be admitted in the first instance, as distinguished from secondary evidence, which is allowed only when primary evidence cannot be had.

2. A primary obligation is one which is the principal object of the contract; for example, the primary obligation of the seller is to deliver the thing sold, and to transfer the title to it. It is distinguished from the accessory or secondary obligation to pay damages for not doing so. 1 Bouv. Inst. n. 702.

PRIMARY EVIDFNCE. The best evidence of which the case in its nature is susceptible. 3 Bouv. Inst. n. 3053. Vide Evidence.

PRIMARY POWERS. The principal authority given by a principal to his agent; it differs from mediate powers. (q. v.) Story, Ag. _58.

PRIMATE, eccles. law.. An archbishop who has jurisdiction over one or several other metropolitans.

PRIMER ELECTION. A term used to signify first choice.

2. In England, when coparcenary lands are divided, unless it is otherwise agreed, the eldest sister has the first choice of the purparts; this part is called the enitia pars. (q. v.) Sometimes the oldest sister makes the partition, and in that case, to prevent partiality, she takes the last choice. Hob. 107; Litt. __243, 244, 245; Bac. Ab. Coparceners, C.

PRIMER SEISIN, Eng. law. The right which the king had, when any of his tenants died seised of a knight's fee, to receive of the heir, provided he were of fall age, one whole year's profits of the lands, if they were in immediate possession; and half a year's profits, if the lands were in reversion, expectant on an estate for life. 2 Bl. Com. 66.

PRIMOGENITURE. The state of being first born the eldest.

2. Formerly primogeniture gave a title in cases of descent to the oldest son in preference to the other children;

this unjust distinction has been geuerally abolished in the United States.

PRIMOGENITUS. The first born. 1 Ves. 290 and see 3 M. & S. 25; 8 Taunt. 468; 3 Vern. 660.

PRIMUM DECRETUM. In the courts of admiralty, this name is given to a provisional decree. Bac. Ab. The Court of Admiralty, E.

PRINCE. In a general sense, a sovereign the ruler of a nation or state. The son of a king or emperor, or the issue of a royal family; as, princes of the blood. The chief of any body of men.

2. By a clause inserted in policies of insurance, the insurer is liable for all losses occasioned by "arrest or detainment of all kings, princes, and people, of what nation, condition, or quality soever." 1 Bouv. Inst. n. 1218.

PRINCIPAL. This word has several meanings. It is used in opposition to accessary, to show the degree of crime committed by two persons; thus, we say, the principal is more guilty than the accessary after the fact.

2. In estates, principal is used as opposed to incident or accessory; as in the following rule: "the incident shall pass by the grant of the principal, but not the principal by the grant of the incident. Accessorium non ducit, sed sequitur suum principale." Co. Litt. 152, a.

3. It is used in opposition to agent, and in this sense it signifies that the principal is the prime mover.

4. It is used in opposition to interest; as, the principal being secured tho interest will follow.

5. It is lased also in opposition to surety; thus, we say the principal is answerable before the surety.

6. Principal is used also to denote the more important; as, the principal person.

7. In the English law, the chief person in some of the inns of chancery is called principal of the house. Principal is also used to designate the best of many things as, the best bed, the best table, and the like.

PRINCIPAL, contracts. One who, being competent to contract, and who is sui juris, employs another to do any act for his own benefit, or on his own account.

2. As a general rule, it may be said, that every person, sui juris, is capable of being a principal, for in all cases where a man has power as owner, or in his own right to do anything, he may do it by another. 16 John. 86; 9 Co. 75; Com. Dig. Attorney, C 1; Heinec. ad Pand. P. 1, lib. 3, tit. _424.

3. Married women, and persons who are deprived of understanding, as idiots, lunatics, and others, not sui juris, are wholly incapable of entering into any contract, and, consequently, cannot appoint an agent. Infants and married women are generally, incapable but, under special circumstances, they may make such appointments. For instance, an infant may make an attorney, when it is for his benefit; but lie cannot enter into any contract which is to Iiis prejudice. Com. Dig. Enfant, C 2; Perk. 13; 9 Co. 75; 3 Burr. 1804. A married woman cannot, in general, appoint an agent or attorney, and when it is requisite that one should be appointed, the hushand generally appoints for both. Perhaps for her separate property she may, with her hushand, appoint an agent or attorney; Cro. Car. 165,; 2 Leon. 200; 2 Buls. R. 13; but this seems to be doubted. Cro. Jac. 617; Yelv. 1; 1 Brownl. 134; 2 Brownl. 248; Adams' Ej. 174; Runn. Ej. 148.

4. A principal has rights which he can enforce, and is liable to obligations which he must perform. These will be briefly considered: 1. The rights to which principals are entitled arise from obligations due to them by their agents, or by third persons.

5. − 1st. The rights against their agents, are, 1. To call them to an account at all times, in relation to the business of their agency. 2. When the agent violates his obligations to his principal, either by exceeding his authority, or by positive misconduct, or by mere negligence or omissions in the discharge of the functions of his agency, or in any other manner, and any loss or damage falls on his principal, the latter will be entitled to full indemnity. Paley on Ag. by Lloyd, 7, 71, 74, and note 2 12 Pick. 328; 1 B. & Adolph. 415; 1 Liverm. Ag. 398. 3. The principal has a right to supersede his agent, where each may maintain a suit against a third person, by suing in his own name; and he may, by his own intervention, intercept, suspend, or extinguish the right of the agent under the contract. Paley Ag. by Lloyd, 362; 7 Taunt. 237, 243; 1 M. & S. 576 1 Liverm. Ag. 226−228; 2 W. C. C. R. 283; 3 Chit. Com. Law, 201−203.

6. − 2d. The principal's rights against third persons. 1. When a contract is made by the agent with a third person in the name of his principal, the latter may enforce it by action. But to this rule there are some exceptions 1st. When the instrument is under seal, and it has been exclusively made between the agent and the third person; as, for example, a charter party or bottomry bond iii this case the principal cannot sue on it. See 1 Paine, Cir. R. 252; 3 W. C. C. R. 560; 1 M. &. S. 573; Abbott, Ship, pt. 3, c. 1, s. 2. 2d. When an exclusive credit is given to and by the agent, and therefore the principal cannot be considered in any manner a party to the contract, although he may have authorized it, and be entitled to all the benefits arising from it. The case of a foreign factor, buying or selling

goods, is an example of this kind: he is treated as between himself and the other party, as the sole contractor, and the real principal cannot sue or be sued on the contract. This, it has been well observed, is a general rule of commercial law, founded upon the known usage of trade; and it is strictly adhered to for the safety and convenience of foreign commerce. Story, Ag. _423; Smith Mer. Law, 66; 15 East, R. 62; 9 B. & C. 87. 3d. When the agent, has a lien or claim upon the property bought or sold, or upon its proceeds, when it equals or exceeds the amount of its value. Story, Ag. __407, 408, 424.

7. − 2. But contracts are not unfrequently made without mentioning the name of the principal; in such case he may avail himself of the agreement, for the contract will be treated as that of the principal, as well as of the agent. Story, Ag. _109, 111, 403, 410, 417, 440; Paley, Ag. by Lloyd, 21, 22; Marsh. Ins. b. 1, c. 8, _3, p. 311; 2 Kent's Com. 3d edit. 630; 3 Chit. Com. Law, 201; vide 1 Paine's C. C. Rep. 252.

8. − 3. Third persons are also liable to the principal for any tort or injury done to his property or rights in the course of the agency. Pal. Ag. by Lloyd, 363; Story, Ag. _436; 3 Chit. Com. Law, 205, 206; 15 East, R. 38.

9. − 2. The liabilities of the principal are either to his agent or to third persons.

10. − 1st. The liabilities of the principal to his agent, are, 1. To reimburse him all expenses he may have lawfully incurred about the agency. Story, Ag. _335 Story, Bailm. _196, 197; 2 Liv. Ag. 11 to 33.

2. To pay him his commissions as agreed upon, or according to the usage of trade, except in cases of gratuitous agency. Story, Ag. _323; Story, Bailm. 153, 154, 196 to 201. 3. To indemnify the agent when he has sustained damages in consequence of the principal's conduct for example, when the agent has innocently sold the goods of a third person, under the direction or authority of his principal, and a third person recovers damages against the agent, the latter will be entitled to reimbursement from the principal. Pal. Ag. by Lloyd, 152, 301; 2 John. Cas. 54; 17 John. 142; 14 Pick. 174.

11. − 2d. The liabilities of the principal to third persons, are, 1. To fulfii all the engagements made by the agent, for or in the name of the principal, and which come within the scope of his authority. Story, Ag. _126.

2. When a man stands by and permits another to do an act in his name, his authority will be presumed. Vide Authority, and 2 Kent, Com. 3d edit. 614; Story, Ag. _89, 90, 91; and articles Assent; Consent.

3. The principal is liable to third persons for the misfeasance, negligence, or omission of duty of his agent; but he has a remedy over against the agent, when the injury has occurred in consequence of his misconduct or culpable neglect; Story, Ag. _308; Paley, Ag. by Lloyd, 152, 3; 1 Metc. 560; 1 B. Mont. 292; 5 B. Monr. 25; 9 W. & S. 72; 8 Pick. 23; 6 Gill & John. 292; 4 Q. B. 298; 1 Hare & Wall. Sel. Dee. 467; Dudl. So. Car. R. 265, 268; 5 Humph. 397; 2 Murph. 389; 1 Ired. 240; but the principal is not liable for torts committed by the agent without authority. 5 Humph. 397; 2 Murph. 389; 19 Wend. 343; 2 Metc. 853. A principal is also liable for the misconduct of a sub−agent, when retained by his direction, either express or implied. 1 B. & P. 404; 15 East, 66.

12. The general, rule, that a principal cannot be charged with injuries committed by his agent without his assent, admits of one exception, for reasons of policy. A sheriff is liable, even under a penal statute, for all injurious acts, wilful or negligent, done by his appointed officers, colore officii, when charged and deputed by him to execute the law. The sheriff is, therefore, liable where his deputy wrongfully executes a writ; Dougl. 40; or where he takes illegal fees. 2 E. N. P. C. 585.

13. But the principal may be liable for his agent's misconduct, when he has agreed, either expressly or by implication, to be so liable. 8 T. R . 531; 2 Cas. N. P. C. 42. Vide Bouv. Inst. Index, h. t.; Agency; Agent.

PRINCIPAL, crim. law. A principal is one who is the actor in the commission of a crime.

2. Principals are of two kinds; namely, 1. Principals in the first degree, are those who have actually with their own hands committed the fact, or have committed it through an innocent agent incapable himself, of doing so; as an example of the latter kind, may be mentioned the case of a person who incites a child wanting discretion, or a person non compos, to the commission of murder, or any other crime, the incitor, though absent, when the crime was committed, is, ex necessitate, liable for the acts of his agent and is a principal in the first degree. Fost. 340; 1 East, P. C. 118; 1 Hawk. c. 31, s. 7; 1 N. R. 92; 2 Leach, 978. It is not requisite that each of the principals should be present at the entire transaction. 2 East, P. C. 767. For example, where several persons agree to forge an instrument, and each performs some part of the forgery in pursuance of the common plan, each is principal in the forgery, although one may be away when it is signed. R. & R. C. C. 304; Mo. C. C. 304, 307.

3. − 2. Principals in the second degree, are those who were present aiding and abetting the commission of the fact. They are generally termed aiders and abettors, and sometimes, improperly, accomplices. (q. v.) The presence which is required in order to make a man principal in the second degree, need not be a strict actual, immediate

presence, such a presence as would make him an eye or ear witness of what passes, but may be a constructive presence. It must be such as may be sufficient to afford aid and assistance to the principal in the first degree. 9 Pick. R. 496; 1 Russell, 21; Foster, 350.

4. It is evident from the definition that to make a wan a principal, he must be an actor in the commission of the crime and, therefore, if a man happen merely to be present when a felony is committed without taking any part in it−or aiding those who do, he will not, for that reason, be considered a principal. 1 Hale, P. C. 439; Foster, 350.

PRINCIPAL CONTRACT. One entered into by both parties, on their own accounts, or in the several qualities they assume. It differs from an accessory contract. (q. v.) Vide Contract.

PRINCIPAL OBLIGATION. That obligation which arises from the principal object of the engagement which has been contracted between the parties. It differs from an accessory obligation. (q. v.) For example, in the sale of a horse, the principal obligation of the seller is to deliver the horse; the obligation to take care of him till delivered is an accessory engagement. Poth. Obl. n. 182. By principal obligation is also understood tho engagement of one who becomes bound for himself and not for the benefit of another. Poth. Obl. n. 186.

PRINCIPLES. By this term is understood truths or propositions so clear that they cannot be proved nor contradicted, unless by propositions which are still clearer. They are of two kinds, one when the principle is universal, and these are kuown as axioms or maxims; as, no one can transmit rights which he has not; the accessory follows the principal, &c. The other class are simply called first principles. These principles have known marks by which they may always be recognized. These are, 1. That they are so clear that they cannot be proved by anterior and more manifest truths. 2, That they are almost universally received. 3. That they are so strongly impressed on our minds that we conform ourselves to them, whatever may be our avowed opinions.

2. First principles have their source in the sentiment of our own existence, and that which is in the nature of things. A principle of law is a rule or axiom which is founded in the nature of the subject, and it exists before it is expressed in the form of a rule. Domat, Lois Civiles, liv. prel. t. 1, s. 2 Toull. tit. prel. n. 17. The right to defend one's self, continues as long as an unjust attack, was a principle before it was ever decides by a court, so that a court does Dot establish but recognize principles of law.

3. In physics, by principle is understood that which constitutes the essence of a body, or its constituent parts. 8 T. R. 107. See 2 H. Bl. 478. Taken in this sense, a principle cannot be patented; but when by the principle of a machine is meant the modus operandi, the peculiar device or manner of producing any given effect, the application of the principle may be patented. 1 Mason, 470; 1 Gallis, 478; Fessend. on Pat. 130; Phil. on Pat. 95, 101; Perpigna, Manuel des Inventeurs, &c., c. 2, s. 1.

PRINTING. The art of impressing letters; the art of making books or papers by impressing legible characters.

2. The right to print is guarantied by law, and the abuse of the right renders the guilty person liable to punishment. See Libel,; Liberty of the Press; Press.

PRIORITY. Going before; opposed to posteriority. (q. v.)

2. He who has the precedency in time has the advantage in right, is the maxim of the law; not that time, considered barely in itself, can make any such difference, but because the whole power over a thing being secured to one person, this bars all others from obtaining a title to it afterwards. 1 Fonb. Eq. 320.

3. In the payment of debts, the United States are entitled to priority when the debtor is insolvent, or dies and leaves an insolvent estate. The priority was declared to extend to cases in which the insolvent debtor had made a vol−untary assignment of all his property, or in which his effects had been attached as an absconding or absent debtor, on which an act of legal bankruptcy had been committed. 1 Kent, Com. 243; 1 Law Intell. 219, 251; and the cases there cited.

4. Among common creditors, he who has the oldest lien has the preference; it being a maxim both of law and equity, qui prior est tempore, potior est jure. 2 John. Ch. R. 608. Vide Insolvency; and Serg. Const. La*, Index, h. t.

PRISAGE. The name of an ancient duty taken by the English crown on wines imported into England. Bac. Ab. Smuggling and Customs, C. 2; Harg. L. Tr. 75.

PRISON. A legal prison is the building designated by law, or used by the sheriff, for the confinement, or detention of those whose persons are judicially ordered to be kept in custody. But in cases of necessity, the sheriff may make his own house, or any other place, a prison. 6 John. R. 22. 2. An illegal prison is one not authorized by law, but established by private authority; when the confinement is illegal, every place where the party is arrested is a prison; as, the street, if he be detained in passing along. 4 Com. Dig. 619; 2 Hawk. P. C. c. 18, s. 4; 1 Buss.

Cr. 378; 2 Inst. 589.

PRISON BREAKING. The act by which a prisoner, by force and violence, escapes from a place where he is lawfully in custody. This is an offence at common law.

2. To constitute this offence, there must be, 1. A lawful commitment of the prisoner; vide Regular and Irregular process. 2. An actual breach with force and violence of the prison, (q. v.) by the prisoner himself or by others with his privity and procurement. Russ. & Ry. 458; 1 Russ. Cr. 380. 3. The prisoner must escape. 2 Hawk. P. C. c. 18, s. 12; vide 1 Hale P. C. 607; 4 Bl. Com. 130; 2 Insts. 500; 2 Swift's Dig. 327; Alis. Prin. 555; Dalloz, Dict. mot Effraction.

PRISONER One held in confinement against his will.

2. Prisoners are of two kinds, those lawfully confined, and those unlawfully imprisoned.

3. Lawful prisoners are either prisoners charged with crimes, or for a civil liability. Those charged with crimes are either persons accused and not tried, and these are considered innocent, and are therefore entitled to be treated with as little severity as possible, consistently with the certain detention of their persons; they are entitled to their discharge on bail, except in capital cases, when the proof is great; or those who have been convicted of crimes, whose imprisonment, and the mode of treatment they experience, is intended as a punishment, these are to be treated agreeably to the requisitions of the law, and in the United States, always with humanity. Vide Penitentiary. Prisoners in civil cases, are persons arrested on original or mesne process, and these may generally be discharged on bail; and prisoners in execution, who cannot be discharged, except under the insolvent laws.

4. Persons unlawfully confined, are those who are not detained by virtue of some lawful, judicial, legislative; or other proceeding. They are entitled to their immediate discharge on habeas corpus. For the effect of a contract entered into by a prisoner, see 1 Salk. 402, n.; 6 Toull. 82.

5. By tho resolution. of congress, of September 23, 1789, it was recommended to the legislatures of the several states, to pass laws, making it expressly the duty of the keepers of those jails to receive and safely keep therein, all persons committed under the authority of the United States, until they shall be discharged by due course of the laws thereof, under the like penalties as in the case of prisoners committed under the authority of such states respectively. And by the resolution of March 3, 1791, it is provided, that if any state shall not have complied with the above recommendation the marshal in such state, under the direction of the judge of the district, shall be authorized to hire a convenient place to serve as a temporary jail. See 9 Cranch, R. 80.

PRISONER OF WAR. One who has been captured while fighting under the banner of some state. He is a prisoner, although never coufined in a prison.

2. In modern times, prisoners are treated with more humanity than formerly; the individual captor has now no personal right to his prisoner. Prisoners are under the superintendence of the government, and they are now frequently exchanged. Vide 1 Kent, Com . 14.

3. It is a general rule, that a prisoner is out of the protection of the laws of the state, so for, that he can have no civil remedy under them, and he can, therefore, maintain no action. But his person is protected against all unlawful acts. Bac. Ab. Abatement, b. 3; Bac. Ab. Aliens, D.

PRIVATE. Not general, as a private act of the legislature; not in office; as, a private person, as well as an officer, may arrest a felon; individual, as your private interest; not public, as a private way, a private nuisance.

PRIVATEER war. A vessel owned by one or by a society of private individuals, armed and equipped at his or their expense, for the purpose of carrying on a maritime war, by the authority of one of the belligerent parties.

2. For the purpose of encouraging the owners of private armed vessels, they are usually allowed to appropriate to themselves the property they capture, or, at least, a large proportion of it. 1 Kent, Com. 96; Posh. du Dr. de Propr. n. 90 et seq. See 2 Dall. 36; 3 Dall. 334; 4 Cranch, 2; 1 Wheat. 46; 3 Wheat. 546; 2 Gall. R. 19; Id. 526; 1 Mason, R. 365 3 Wash. C. C. R. 209 2 Gall. R. 56; 5 Wheat. 338; Mann. Com. 1.16.

PRIVEMENT ENCEINTE. This term is used to signify that a woman is pregnant, but not quick with child; (q. v.) and vide Wood's Inst. 662; Enceinte; Foetus; Pregnancy.

PRIVIES. Persons who are partakers, or have an interest in any action or thing, or any relation to another. Wood, Inst. b. 2, c. 3, p. 255; 2 Tho. Co. Lit. 506 Co. Lit. 271, a.

2. There aye several kinds of privies, namely, privies in blood, as the heir is to the ancestor; privies in representation, as is the executor or administrator to the deceased privies in estate, as the relation between the donor−and donee, lessor and lessee; privies in respect to contracts; and privies on account of estate and contract together. Tho. Co. Lit. 506; Prest. Con v. 327 to 345. Privies have also been divided into privies in fact, and

privies in law. 8 Co. 42 b. Vide Vin. Ab. Privily; 5 Coin. Dig. 347; Ham. on Part. 131; Woodf. Land. & Ten. 279, 1 Dane's Ab. c. 1, art. 6.

PRIVILEGE, civil law. A right which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors. Louis. Code, art. 3153; Dict. de Juris. art. Privilege: Domat, Lois Civ. liv. 2, t. 1, s. 4, n. 1.

2. Creditors of the same rank of privileges, are paid in concurrence, that is, on an equal footing. Privileges may exist either in movables, or immovables, or both at once. They are general or special, on certain movables. The debts which are privileged on all the movables in general, are the following, which are paid in this order. 1. Funeral charges. 2. Law charges, which are such as are occasioned by the prosecution of a suit before the courts. But this name applies more particularly to costs, which the party cast has to pay to the party gaining the cause. It is in favor of these only that the law grants the privilege. 3. Charges, of whatever nature, occasioned by the last sickness, concurrently among those to whom they are due; see Last sickness. 4. The wages of servants for the year past, and so much as is due for the current year. 5. Supplies of provisions made to the debtor or his family during the last six months, by retail dealers, such as bakers, butchers, grocers; and during the last year by keepers of boarding houses and taverns. 6. The salaries of clerks, secretaries, and other persons of that kind. 7. Dotal rights, due to wives by their hushands.

3. The debts which are privileged on particular movables, are, 1. The debt of a workman or artizan for the price of his labor, on the movable which he has repaired, or made, if the thing continues still in his possession. 2. That debt on the pledge which is in the creditor's possession. 3. The carrier's charges and accessory expenses on the thing carried. 4. The price due on movable effects, if they are yet in the possession of the purchaser; and the like. See Lien.

4. Creditors have a privilege on immovables, or real estate in some, cases, of which the following are instances: 1. The vendor on the estate by him sold, for the payment of the price, or so much of it as is due whether it be sold on or without a credit. 2. Architects and undertakers, bricklayers and other workmen employed in constructing, rebuilding or repairing houses, buildings, or making other works on such houses, buildings, or works by them constructed, rebuilt or repaired. 3. Those who have supplied the owner with materials for the construction or repair of an edifice or other work, which he has erected or repaired out of these materials, on the edifice or other work constructed or repaired. Louis. Code, art. 3216. See, generally, as to privilege. Louis. Code, tit. 21; Code Civ. tit. 18; Dict. de Juris. tit. Privilege; Lien; Last sickness; Preference.

PRIVILEGE, mar. law. An allowance to the master of a ship of the general nature with primage, (q. v.) being compensation or rather a gratuity customary in certain trades, and which the law assumes to be a fair and equitable allowance, because the contract on both sides is made under the knowledge such usage by the parties. 3 Chit. Com. Law, 431.

PRIVILEGE, rights. This word, taken its active sense, is a particular law, or a particular disposition of the law, which grants certain special prerogatives to some persons, contrary to common right. In its passive sense, it is the same prerogative granted by the same particular law.

2. Examples of privilege may be found in all systems of law; members of congress and of the several legislatures, during a certain time, parties and witnesses while attending court; and coming to and returning from the same; electors, while going to the election, remaining on the ground, or returning from the same, are all privileged from arrest, except for treason, felony or breach of the peace.

3. Privileges from arrest for civil cases are either general and absolute, or limited and qualified as to time or place.

4. − 1. In the first class may be mentioned ambassadors, and their servants, when the debt or duty has been contracted by the latter since they entered into the service of such ambassador; insolvent debtors duly discharged under the insolvent laws; in some places, as in Pennsylvania, women for any debt by them contracted; and in general, executors and administrators, when sued in their representative character, though they have been held to bail. 2 Binn. 440.

5. − 2. In the latter class may be placed, 1st. Members of congress this privilege is strictly personal, and is not only his own, or that of his constituent, but also that of the house of which he is a member, which every man is bound to know, and must take notice of. Jeff. Man. _3; 2 Wils. R. 151; Com. Dig. Parliament, D. 17. The time during which the privilege extends includes all the period of the session of congress, and a reasonable time for going to, and returning from the seat of government. Jeff. Man. _3; Story, Const. __856 to 862; 1 Kent, Com. 221;

1 Dall. R. 296. The same privilege is extended to the members of the different state legislatures.

6. − 2d. Electors under the constitution and laws of the United States, or of any state, are protected from arrest for any civil cause, or for any crime except treason, felony, or a breach of the peace, eundo, morando, et redeundo, that is, going to, staying at, or returning from the election.

7. − 3d. Militia men, while engaged in the performance of military duty, under the laws, and eundo, morando et redeundo.

8. − 4th. All persons who, either necessarily or of right are attending any court or forum of justice, whether as judge, juror, party interested or witness, and eundo, morando et redeundo. See 6 Mass. R, 245; 4 Dall. R. 329, 487; 2 John. R. 294; 1 South. R. 366; 11 Mass. R. 11; 3 Cowen, R. 381; 1 Pet. C. C. R. 41.

9. Ambassadors are wholly exempt from arrest for civil or criminal cases.

Vide Ambassador. See, generally, Bac. Ab. h. t.; 2 Rolle's Ab. 272; 2 Lilly's Reg. 369; Brownl. 15; 13 Mass. R. 288; 1 Binn. R. 77; 1 H. Bl. 686; Bouv. Inst. Index, h. t.

PRIVILEGED COMMUNICATIONS. Those statements made by a client to his counsel or attorney, or solicitor, in confidence, relating to some cause Or action then pending or in contemplation.

2. Such communications cannot be disclosed without the consent of the client. 6 M. & W. 587; 8 Dow]. 774; 2 Yo. & C. 82; 1 Dowl. N. S. 651; 9 Mees. & W. 508. See Confidential communication.

PRIVILEGIUM CLERICALE. The same as benefit of clergy.

PRIVITY. The mutual or successive relationship to the same rights of property. 1 Greenl. Ev. _189; 6 How. U. S. R. 60.

PRIVITY OF CONTRACT. The relation which subsists between two contracting parties. Hamm. on Part. 182.

2. From the nature of the covenant entered into by him, a lessee has both privity of contract and of estate; and though by an assignment of his lease he may destroy his privity of estate, still the privity of contract remains, and he is liable on his covenant notwithstanding the assignment. Dougl. 458, 764; Vin. Ab. h. t. 6 How. U. S. R. 60. Vide Privies.

PRIVITY OF ESTATE. The relation which subsists between a landlord and his tenant.

2. It is a general rule that a termor cannot transfer the tenancy or privity of estate between himself and his landlord, without the latter's consent: an assignee, who comes in only in privity of estate, is liable only while he continues to be legal assignee; that is, while in possession under the assignment. Bac. Ab. Covenant, E 4; Woodf. L. & T. 279; Vin. Ab. h: t.; Hamm. on Part. 132. Vide Privies.

PRIVY. One who is a partaker, or has an interest in any action, matter or thing.

PRIVY COUNCIL, Eng. law. A council of state composed of the king and of such persons as he may select.

PRIVY SEAL, Eng. law. A seal which the king uses to such grants or things as pass the great seal. 2 Inst. 554.

PRIVY VERDICT. One which is delivered privily to a judge out of court.

PRIZE, mar. law, war. The apprehension and detention at sea, of a ship or other vessel, by authority of a belligerent power, either with the design of appropriating it, with the goods and effects it contains, or with that of becoming master of the whole or a part of its cargo. 1 Rob. Adm. R. 228. The vessel or goods thus taken are also called a prize. Goods taken on land from a public enemy, are called booty, (q. v.) and the distinction between a prize and booty consists in this, that the former is taken at sea and the latter on laud.

2. In order to vest the title of the prize in the cap tors, it must be brought with due care into some convenient port for adjudication by a competent court. The condemnation must be pronounced by a prize court of the government of the captor sitting in the country of the captor, or his ally; the prize court of an ally cannot condemn. Strictly speaking, as between the belligerent parties the title passes, and is vested when the capture is complete; and that was formerly held to be complete and perfect when the battle was over, and the spes recuperandi was gone. 1 Kent, Com. 100; Abbott on Shipp. Index, h. t.; 13 Vin. Ab. 51; 8 Com. Dig. 885; 2 Bro. Civ. Law, 444; Harr. Dig. Ship. and Shipping, X; Merl. Repert. h. t.; Bouv. Inst. Index. h. t. Vide Infra praesidia.

PRIZE, contracts. A reward which is offered to one of several persons who shall accomplish a certain condition; as, if an editor should offer a silver cup to the individual who shall write the best essay in favor of peace.

2. In this case there is a contract subisting between the editor and each person who may write such essay that he will pay the prize to the writer of the best essay. Wolff, Dr. de la Nat. _675.

3. By prize is also meant a thing which is won by putting into a lottery.

PRIZE COURT, Engl. law The name of court which has jurisdiction of all captures made in war on the high seas.

2. In England this is a separate branch of the court of admiralty, the other branch being called the instance court. (q. v.)

3. The district courts of the United States have jurisdiction both as instance and prize courts, there being no distinction in this respect as in England. 3 Dall. 6; vide 1 Gall. R. 563; Bro. Civ. & Adm. Law, ch. 6 & 7; 1 Kent, Com. 356; Mann. Comm. B. 3, c. 12.

PRO. A Latin proposition signifying 'for.' As to its effects in contracts, vide Plowd. 412.

PRO AND CON. For and against. For example, affidavits are taken pro and con.

PRO CONFESSO, chan. pract. For confessed.

2. When the defendant has been served personally with a subpoena, or when not being so served has appeared, and afterwards neglects to answer the matter contained in the bill, it shall be taken pro confesso, as if the matter were confessed by the defendant. Blake's Ch. Pr. 80; Newl. Ch. Pr. c. 1, s. 12; 1 Johns. Cb. Rep. 8. It also be taken pro confesso if the manner is sufficient. 4 Vin. Ab. 446 2 Atk. 24 3 Ves. 209; Harr. Ch. Pr. 154. Vide 4 Ves. 619, and the cases there cited.

PRO−CURATORS, PRO−TUTORS. Persons who act as curators or tutors, without being lawfully authorized. They are, in general, liable to all the duties of curators or tutors, and are entitled to none of the advantages which legal curators or tutors can claim.

PRO EO QUOD, pleading. For this that. It is a phrase of affirmation, and is sufficiently direct and positive for introducing a material averment. 1 Saund. 117, n. 4; 1 Com. Dig. Pleader, c. 86 2 Chit. Pl. 369−393 Gould on Pl. c. 3, 34.

PRO INDIVISO. For an undivided part. The possession or occupation of lands or tenements belonging to two or mare persons, and consequently neither knows his several portion till divided: Bract. 1. 5.

PRO QUERENTE. For the plaintiff; usually abbreviated, pro quer.

PRO RATA. According to the rate, proportion or allowance. A creditor of an insolvent estate, is to be paid pro rata with creditors of the same class.

PRO RE NATA. For the occasion as it may arise.

PRO TANTO. For so much. See 17 Serg. & Rawle, 400.

PROAMITA. Great paternal aunt; the sister of one's grandfather. Inst. 3, 6, 3 & 4; Dig. 38, 10, 10, 14, et seq.

PROAVUS. Great grandfather. This term is employed in making genealogical tables.

PROBABILITY. That which is likely to happen; that which is most consonant to reason; for example, there is a strong probability that a man of a good moral character, and who has heretofore been remarkable for truth, will, when examined as a witness under oath, tell the truth; and, on the contrary, that a man who has been guilty of perjury, will not, under the same circumstances, tell the truth; the former will, therefore, be entitled to credit, while the latter will not.

PROBABLE. That which has the appearance of truth; that which appears to be founded in reason.

PROBABLE CAUSE. When there are grounds for suspicion that a person has committed a crime or misdemeanor, and public justice and the good of the community require that the matter should be examined, there is said to be a probable cause for, making a charge against the accused, however malicious the intention of the accuser may have been. Cro. Eliz. 70; 2 T. R. 231; 1 Wend. 140, 345; 5 Humph. 357; 3 B. Munr. 4. See 1 P. S. R. 234; 6 W. & S. 236; 1 Meigs, 84; 3 Brev. 94. And probable cause will be presumed till the contrary appears.

2. In an action, then, for a malicious prosecution, the plaintiff is bound to show total absence of probable cause, whether the original proceedings were civil or criminal. 5 Taunt. 580; 1 Camp. N. P. C. 199; 2 Wils. 307; 1 Chit. Pr. 48; Hamm. N. P. 273. Vide Malicious prosecution, and 7 Cranch, 339; 1 Mason's R. 24; Stewart's Adm. R. 115; 11 Ad. & El. 483; 39 E. C. L. R. 150; 24 Pick.−81; 8 Watts, 240; 3 Wash. C. C. R. 31: 6 Watts & Serg. 336; 2 Wend. 424 1 Hill, S. C. 82; 3 Gill & John. 377; 1 Pick. 524; 8 Mass. 122; 9 Conn. 309; 3 Blackf. 445; Bouv. Inst. Index, h. t.

PROBATE OF A WILL. The proof before an officer appointed by law, that an instrument offered to be recorded is the act of the person whose last will and testament it purports to be. Upon proof being so made and security being given when the laws of the state require such security, the officer grants to the executors or administrators cum testamento annexo, when there been adopted, but provision is made for perare no executors, letters testamentary, or of administration.

2. The officer. who takes such probate is variously denominated; in some states he is called judge of probate. in others register, and surrogate in others. Vide 11 Vin. Ab. 5 8 12 Vin. Ab. 126 2 Supp. to Ves. jr. 227 1 Salk. 302;

1 Phil. Ev. 298; 1 Stark. Ev. 231, note, and the cases cited in the note, and also, 12 John. R. 192; 14 John. R. 407 1 Edw. R. 266; 5 Rawle, R. 80 1 N. & McC. 326; 1 Leigh, R. 287; Penn. R. 42; 1 Pick. R. 114; 1 Gallis. R. 662, as to the effect of a probate on real and personal property,

3. In England, the ecclesiastical courts, which take the probate of wills, have no jurisdiction of devises of land. In a trial at common law, therefore, the original will must be produced, and the probate of a will is no evidence.

4. This rule has been somewhat changed in some of the states. In New York it has petuating the evidence of a will. 12 John. Rep. 192; 14 John. R, 407. In Massachusetts, Connecticut, North Carolina, and Michigan, the probate is conclusive of its validity, and a will cannot be used in evidence till proved. 1 Pick. R. 114; l Gallis. R. 622 1 Mich. Rev. Stat. 275. In Pennsylvania, the probate is not conclusive as to lands, and, although not allowed by the Register's court, it may be read in evidence. 5 Rawle's R. 80. In North Carolina, the will must be proved de novo in the court of common pleas, though allowed by the ordinary. 1 Nott & McCord, 326. In New Jersey, probate is necessary, but it is not conclusive. Penn. R. 42.

5. The probate is a judicial act, and while unimpeached, authorizes debtors of the deceased in paying the debts they owed him, to the executors although the will may, have been forged. 3 T. R. 125; see 8 East, Rep. 187. Vide Letters testamentary.

PROBATION. The evidence which proves a thing. It is either by record, writing, the party's own oath, or the testimony of witnesses. Proof. (q. v.) It also signifies the time of a novitiate; a trial. Nov. 5.

PROBATOR. Ancient English law. Strictly, an accomplice in felony, who to save himself confessed the fact, and charged or accused any other as principal or accessary, against whom he was bound to make good his charge. It also signified an approver, or one who undertakes to prove a crime charged upon another. Jacob's Law Dict. h. t.

PROBATORY TERM. In the British courts of admiralty, after the issue is formed between the parties, a time for taking the testimony is assigned, this is called a probatory term.

2. This term is common to both parties, and either party may examine his witnesses. When good cause is shown the term will be enlarged. 2 Bro. Civ. and Adm. Law, 418 Dunl. Pr. 217.

PROBI ET LEGALES HOMINES. Good and lawful men; persons competent in point of law to serve on juries. Cro. Eliz. 654, 751; Cro. Jac. 635; Mart. & Yerg. 147; Hardin, 63; Bac. Ab. Juries, A.

PROBITY. Justice, honesty. A man of probity is one who loves justice and honesty, and who dislikes the contrary. Wolff, Dr. de la Nat. _772. ,

PROCEDENDO, practice. A writ which issues where an action is removed from an inferior to a superior jurisdiction by habeas corpus, certiorari or writ of privilege, and it does not appear to such superior court that the suggestion upon which the cause has been removed, is sufficiently proved; in which case the superior court by this writ remits the cause to the court from whence it came, commanding the inferior court to proceed to the final hearing and determination of the same. See 1 Chit. R. 575; 2 Bl. R. 1060 1 Str. R. 527; 6 T. R. 365; 4 B. & A. 535; 16 East, R. 387.

PROCEEDING. In its general acceptation, this word means the form in which actions are to be brought and defended, the manner of intervening in suits, of conducting them, the mode of deciding them, of opposing judgments and of executing.

2. Proceediugs are ordinary and summary. 1. By ordinary proceedings are understood the regular and usual mode of carrying on, a suit by due course at common law. 2. Summary proceedings are those when the matter in dispute is decided without the intervention of a jury; these must be authorized by the legislature, except perhaps in cages of contempts, for such proceedings are unknown to the common law.

3. In Louisiana, there is a third kind of proceeding, known by the name of executory proceeding, which is resorted to in the following cases: 1. When the creditor's right arises from an act importing a confession of judgment, and which contains a privilege or mortgage in his favor. 2. When the creditor demands the execution of a judgment which has been rendered by a tribunal different from that within whose jurisdiction the execution is sought. Code of Practice, art. 732.

4. In New York the code of practice divides remedies into actions and special proceedings. An action is a regular judicial proceeding, in which one party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence. Every other remedy is a special proceeding. _2.

PROCERES. The name by which the chief magistrates in cities were formerly known. St. Armand, Hist. Eq. 88.

PROCES VERBAL, French law. A true relation in writing in due form of law of what has been done and said

verbally in the presence of a public officer, and what he himself does upon the occasion. It is a species of inquisition of office.

2. The proces verbal should be dated, contain the name, qualities, and residence of the public functionary who makes it, the cause of complaint, the existence of the crime, that which serves to substantiate the charge, point out its nature, the time, the place, the circumstances, state the proofs and presumptions, describe the place, in a word, everything calculated to ascertain the truth. It must be signed by the officer. Dall. Dict. h. t.

PROCESS, practice. So denominated because it proceeds or issues forth in order to bring the defendant into court, to answer the charge preferred against him, and signifies the writ or judicial means by which he is brought to answer. 1 Paine, R. 368 Bouv. Inst. Index, h. t.

2. In the English law, process in civil causes is called original process, when it is founded upon the original writ; and also to distinguish it from mesne or intermediate process, wliich issues pending the suit, upon some collateral interlocutory matter, as, to summon juries, witnesses,, and the like; mesne process is also sometimes put in contradistinction to final process, or process of execution; and then it signifies all process which intervenes between the beginning and end of a suit. 3 Bl. Com. 279.

3. In criminal cases that proceeding which is called a warrant, before the finding of the bill, is termed process when issued after the indictment has been found by the jury. Vide 4 Bl. Com. 319; Dalt. J. c. 193; Com. Dig. Process, A 1; Burn's Dig. Process; Williams, J, Process; 1 Chit. Cr. Law, 338; 17 Vin. Ab. 585.

4. The word process in the 12th section of the 5th article of the constitution of Pennsylvania, which provides that "the style of all process shall be The Commonwealth of Pennsylvania," was intended to refer to such writs only as should become necessary to be issued in the course of the exercise of that judicial power which is established and provided for in the article of the constitution, and forms exclusively the subject matter of it. 3 Penns. R. 99.

PROCESS, rights. The means or method of accomplishing a thing.

2. It has been said that the word manufacture, (q. v.) in the patent laws, may, perhaps, extend to a new process, to be carried on by known implements, or elements, acting upon known substances, and ultimately producing some other known substance, but producing it in a cheaper or more expeditious manner, or of a better and more useful kind. 2 B. & Ald. 349. See Perpigna, Manuel des Inventeurs, &c., c. 1; s. 5, _1, p. 22, 4th ed.; Manufacture; Method.

PROCESS, MESNE, pradice. By this term is generally understood any writ issued in the course of a suit between the original process and execution.

2. By this term is also meant the writ or proceedings in an action to summon or bring the defendant into court, or compel him to appear or put in bail, and then to hear and answer the plaintiffs claim. 3 Chit. Pr. 140.

PROCESS OF GARMISHMENT, practice. It was formerly the practice to deposit deeds and other things in the hands of third persons, to await the performance of covenants, upon which they were to be re−delivered to one of the parties. When one of the parties contended that he was entitled to such things, and the other denied it, and the claiming party brought an action of detinue for them, the defendant was allowed to in terplead, and thereupon he prayed for a monition or notice to compel the other depositor to appear and become a defendant in his stead. This was called a process of garnishment. 3 Reeves, Hist. Eng. Law, eh. 23, p. 448.

PROCESS OF INTERPLEADER, practice. Formerly when two parties concurred in a bailment to a third person of things which were to be delivered to one of them on the performance of a covenant or other thing, and the parties brought several actions of detinue against the bailee, the latter might plead the facts of the case and pray that the plaintiffs in the several actions might interplead with each other; this was called process of interpleader. 3 Reeves, Hist. Law, eh. 23; Mitford, Eq. Pl. by Jeremy, 141; 2 Story, Eq. Jur. _802.

PROCESSIONING. A term used in Tennessee to signify the manner of ascertaining the boundaries of land, as provided for by the laws of that state. Carr. & Nich. Comp. of Stat. of Tenn. 348. The term is also used in North Carolina. 3 Murph. 504; 3 Dev. 268.

PROCHEIN. Next. This word is frequently used in composition; as, prochein amy, prochein cousin, and the like. Co. Lit. 10.

PROCHEIN AMY, more correctly prochain ami. Next friend.

2. He who, without being appointed guardian, sues in the name of an infant for the recovery of the rights of the latter, or does such other acts as are authorized by law; as, in Pennsylvania, to bind the infant apprentice. 3 Serg. & Rawle, 172; 1 Ashm. Rep. 27. For some of the rules with respect to the liability or protection of a prochein amy, see 4 Madd. 461; 2 Str. 709; 3 Madd. 468; 1 Dick. 346; 1 Atk. 570; Mosely, 47, 85; 1 Ves. Jr. 409; 10 Ves.

184; 7 Ves. 425; Edw. on Parties, 182 to 204.

PROCLAMATION, evidence. The act of causing some state matters to be published or made generally known. A written or printed document in which are contained such matters, issued by proper authority; as the president's proclamation, the governor's, the mayor's proclamation. The word proclamation is also used to express the public nomination made of any one to a high office; as, such a prince was proclaimed emperor.

2. The president's proclamation has not the force of law, unless when authorized by congress; as if congress were to pass an act, which should take effect upon the happening of a contingent event, which was to be declared by the president by proclamation to hive happened; in this case the proclamation would give the act the force of law, which, till then, it wanted. How far a proclamation is evidence of facts, see Bac. Ab. Ev. F; Dougl. 594, n; B. N. P. 226; 12 Mod. 216; 8 State Tr. 212; 4 M. & S. 546; 2 Camp. Rep. 44; Dane's Ab. eh. 96, a. 2, 3 and 4; 1 Scam. R. 577; Bro. h. t.

PROCLAMATION, practice. The declaration made by the cryer, by authority of the court, that something is about to be done.

2. It usually commences with the French word Oyez, do you hear, in order to attract attention; it is particularly used on the meeting or opening of the court, and at its adjournment; it is also frequently employed to discharge persons who have been accused of crimes or misdemeanors.

PROCLAMATION OF EXIGENTS, Eng. law. On awarding an exigent, in order to outlawry, a writ of proclamation issues to the sheriff of the county where the party dwells, to make three proclamations for the defendant to yield himself, or be outlawed.

PROCLAMATION OF REBELLION, Eng. law. When a party neglects to appear upon a subpoena, or an attachment in the chancery, a writ bearing this name issues, and if he does not surrender himself by the day assigned, he is reputed, and declared a rebel.

PROCREATION. The generation of children; it is an act authorized by the law of nature: one of the principal ends of marriage is the procreation of children. Inst. tit. 2, in pr.

PROCTOR. One appointed to represent in judgment the party who empowers him, by writing under his hand called a proxy. The term is used chiefly in the courts of civil and ecclesiastical law. The proctor is somewhat similar to the attorney. Avl. Parerg. 421.

PROCURATION, civil law. The act by which one person gives power to another to act in his place, as he could do himself. A letter of attorney.

2. Procurations are either express or implied; an express procuration is one made by the express consent of the parties; the implied or tacit takes place when an individual sees another managing his affairs, and does not interfere to prevent it. Dig. 17, 1, 6, 2; Id. 50, 17, 60; Code 7, 32, 2.

3. Procurations are also divided into those which contain absolute power, or a general authority, and those which give only a limited power. Dig. 3, 3, 58; Id. 17, 1, 60, 4 4. The procurations are ended in three ways first, by the revocation of the authority; secondly, by the death of one of the parties; thirdly, by the renunciation of the mandatory, when it is made in proper time and place, and it can be done without injury to the person who gave it. Inst. 3, 27 Dig. 17, 1; Code 4, 35; and see Authority; Letter of Attorney; Mandate.

PROCURATIONS, eccles. law. Certain sums of money which parish priests pay yearly to the bishops or archdeacons ratione visitationis. it 3, 39, 25; Ayl. Parerg. 429; 17 Vin. Ab. h. t., pa e 544.

PROCURATOR, civil law. A proctor; a person who acts for another by virtue of a procuration. Procurator est, qui aliena negotia mandata Domini administrat. Dig 3, 3, 1. Vide Attorney; Authority.

PROCURATOR in rem suam. Scotch law. This imports that one is acting as attorney as to his own property. When an assignment of a thing is made, as a debt, and a procuration or power of attorney is given to the assignee to receive the same, he is in such case procurator in rein suam. 3 Stair's Inst. 1, _2, 3, &c.; 3 Ersk. 5, _2; 1 Bell's Com. B. 5, c. 2, s. 1, _2.

PROCURATORIUM. The proxy or instrument by which a proctor is constituted and appointed.

PRODIGAL, civil law, persons. Prodigals were persons who, though of full age, were incapable of managing their affairs, and of the obligations which attended them, in consequence of their bad conduct, and for whom a curator was therefore appointed.

2. In Pennsylvania, by act of assembly, an habitual drunkard is deprived of the management of his affairs, when he wastes his property, and his estate is placed in the bands of a committee.

PRODITORIE. Treasonably. This is a technical word formerly used in indictments for treason, when they were

written in Latin.

PRODUCENT. He who produces a witness to be examined. The term is used in the ecclesiastical courts.

PROFANE. That which has not been consecrated. By a profane place is understood one which is neither sacred, nor sanctified, nor religious. Dig. 11, 7, 2, 4. Vide Things.

PROFANELY. In a profane manner. In an indictment, under the act of assembly of Pennsylvania, against profanity, it is requisite that the words should be laid to have been spoken profanely. 11 S. & R. 394.

PROFANENESS or PROFANITY, crim. law. A disrespect to the name of God, or his divine providence. This is variously punished by statute in the several states.

PROFECTITUS, civil law. That which descends to us from our ascendants. Dig. 23, 3, 5.

PROFERT IN CURIA, plead. Produces in court.

2. When the plaintiff declares on a deed, or the defendant pleads a deed, and makes title under it, be must do it with a profert in curia, by declaring that he " brings here into court, the said writing obligatory," or other deed.

3. The object of this is to enable the court to inspect the instrument pleaded, the construction and legal effect of which is matter of law, and to entitle the adverse party to oyer of it; 10 Co. 92, b.; 1 Chit. Pl. 414; 1 Archb. Pr. 164; but one who pleads a deed of any kind, without making title under it, is not bound to make profert of it. Gould on Pl. oh. 7, part 2, _47. To the above rule that he who declares on, or pleads a deed, and makes title under it, must make profert of it, there are several exceptions, all of which are founded on the pleader's actual or presumed inability to produce the instrument. A stranger to a deed, therefore, may in general plead it, and make title under it, without profert. Com. Dig. Pleader, 0 8; Cro. Jac. 217; Cro. Car. 441; Carth. 316. Also he who claims title by operation of law, under a deed, to another, may plead the deed without profert. Co. Litt. 225; Bac. Abr. Pleas, I 12; 5 Co. 75. When the deed is in the hands of the opposite party, or destroyed by him, no profert need be made; or when it has been lost or destroyed by time or casualty.

4. In all these cases, to excuse the want of a profert, the special facts which bring the case within the exception, should be alleged in the party's pleadings. Vide Gould, Pl. ch. 8, part 2; Lawes' Pl. 96; 1. Saund. 9, a, note.

PROFESSION. This word has several significations. 1. It is a public declaration respecting something. Code, 10, 41, 6.

2. It i's a state, art, or mystery; as the legal profession. Dig. 1, 18, 6, 4; Domat, Dr. Pub. 1. 1, t. 9, s. 1, n. 7. 3. In the ecclesiastical law, it is the act of entering into a religious order. See 17 Vin. Ab. 545.

PROFITS. In general, by this term is understood the benefit which a man derives from a thing. It is more particularly applied to such benefit as arises from his labor and skill.

2. It has, however, several other meanings. 1. Under the term profits, is comprehended the produce of the soil, whether it arise above or below the surface as herbage, wood, turf, coals, minerals, stones, also fish in a pond or running water. Profits are divided into profits a prendre, or those taken and enjoyed by the mere act of the proprietor himself; and profits a rendre, namely, such as are received at the hands of, and rendered by another. Ham. N. P. 172.

3. − 2. When land is devised to pay debts and legacies out of rents and profits, the land may be sold; otherwise, if out of the annual rents and profits. 1 Vern. 104, ca. 90.

4. − 3. The natural meaning of raising by rents and profits, is by the yearly profits but to prevent an inconvenience the word profits has, in some particular instances, been extended to any profits the land will yield, either by sale or mortgage; 1 Ch. Ca. 176; 2 Ch. Ca. 205; 2 Vern. 420; 1 P. Wms. 468; Pre. Ch. 586; 2 P. Wms. 19; 2 Ves. Jr. 481, n.; 2 Bro. Par. Cas. 418; 1 Atk. 506. Id. 550; 2 Atk. 358 where cases on raising portions in the life of parents and to the prejudice of the remainder−man are considered; and vide Powell on Mort. 90, et seq. But in no case where there are subsequent restraining words, has the word profit; been extended. Pre. Ch. 586, note, and the cases cited there; 1 Atk. 506; 2 Atk. 105.

5. − 4. A devise of profit considered, at law and in equity, a devise of the land itself. 1 Atk. 506; 1 Ves. 171 et vide 1 Ves. 42; 2 Atk. 358; 1 Bro. Ch. R. 310; 9 Mus. R. 372; 1 Pick. R. 224; 2 Pick. R. 425; 4 Pick. R. 203.

6. − 5. Where an assignment of rents and profits recites the intention of the parties then to make a security for money borrowed, and there is a covenant for further assurance, this amounts to an equitable lien, and would entitle the assignee to insist upon a mortgage. 2 Cox, 233; S. C. 1 Ves. Jr. 162; see also 3 Bro. C. C. 538; S. C. 1 Ves. Jr. 477.

7. − 6. Much doubt has arisen upon the question, whether the profit expected to arise upon maritime commerce be a proper subject of insurauce. 1 Marsh. on Ins. 94. In some countries, as Holland and France, Code de Com.

347, it is illegal to insure profits; but in England, profits expected to arise from a cargo of goods may be insured. 1 Marsh. on Ins. 97.

8. − 7. Personal representatives aud trustees are generally bound to account for all the profits they make out of the assets entrusted to them. See Toll. Ex. 486; 1 Serg. & Rawle, 245; 1 T. R. 295; 1 M. & S. 412; Supp. to Ves. Jr., Notes to Wilkinson v. Strafford, 1 Ves. Jr. 32 Paley on Agency, 48, 9.

9. − 8. In cases of breach of contract, the plaintiff cannot in general recover damages for the profits he might have made. 1 R. 85, 94; S. C. 3 W. C. C. R. 184; 1 Pet. R. 172; see also 1 Yeates, 36; 11 Serg. & Rawle, 445.

10. − 9. It is a general rule that any participation in the profits of a trade or business, makes a person receiving such profits responsible as a partner. Gow on Part.; 6 Serg. & Rawle, 259; 1 Com. on Contr. 287 to 293. See generally on this subject, 3 W. C. C. R. 110; 15 Serg. & Rawle, 137; Chit. on Contr. 67; 6 Watts & Serg. 139.

11. But it is proper to observe that to make one a partner he must have such an interest in the profits as will entitle him to an account as it partner; he must be entitled to them as a principal. A clerk who receives a salary to be paid out of the profits would not be so considered, for there is a distinction between receiving the profits as sucli, and a commission on tile profits, and although this seems, at first sight, but a flimsy distinction, it appears to be a well settled rule of law. 15 S. & R. 157; 6 S. R. 259; 1 Denio, 337; 20 Wend. 70; 3 M. Gr. & So. 32; 17 Ves. 404; 1 Camp. 329; 2 H. Bl. 590; 3 M. G. & S. 651; 3 Kent, Com. 25, note (b) 4th ed.; Cary on Partn. 11; Colly on Part. p. 17; Addis on Contr. 451; 4 M. & S. 244; Russ. & Ry. 141; 3 M. & P. 48; 5 Taunt. 74; 4 T. R. 144. The Roman law, Dig. 17, 2, 44; Poth. Pand. 17, 2, 4; and the French law, 5 Duv. Dr. Civ. Fr. n. 48; 17 Dur. Dr. Fr. n. 332; Poth. du Contrat de Societe, n. 13, recognize the same distinction. Such is also the law of Scotland. Burt. Man. P. L. 178. When there are no stipulations to the contrary, the profits are to be enjoyed, and the losses borne by all the partners in equal proportions. Wats. Partn. 59, 60; Colly. Partn. 105; 6 Wend. 263; Story, Partn. _24; 7 Bligh, R. 132; Wilson & Shaw. 16.

12. − 10. A purchaser is entitled to the profits of the estate from the time fixed upon for completing the contract, whether he does or does not take possession of the estate. Sugd. on Vend. 353. See 6 Ves. Jr. 143, 352.

13. Profits among merchants are divided into gross profits and net profits. The former are the profits without any deduction for losses; the latter are the same profits, after having deducted all the losses. Story, Partn. _34.

PROGRESSION. That state of a business which is neither the commencement nor the end. Some act done after the matter has commenced and before it is completed. Plowd. 343. Vide Consummation; Inception.

PROHIBITION, practice. The name of a writ issued by a superior court, directed to the judge and parties of a suit in an inferior court, commanding them to cease from the prosecution of the same, upon a suggestion that the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other court. 3 Bl. Com. 112; Com. Dig. h. t.; Bac. Ab. h. t. Saund. Index, h. t.; Vin. Ab. h. t.; 2 Sell. Pr. 308; Ayliffe's Parerg. 434; 2 Hen. Bl.

2. The writ of prohibition may also be issued when, having jurisdiction, the court has attempted to proceed by rules differing from those which ought to be observed; Bull. N. P. 219; or when, by the exercise of its jurisdiction, the inferior court would defeat a legal right. 2 Chit. Pr. 355.

PROHIBITIVE IMPEDIMENTS, canon law. Those impediments to a marriage which are only followed by a punishment, but do not render the marriage null. Bowy. Alod. Civ. Law, 44.

PROJET. In international law, the draft of a proposed treaty or convention is called a projet.

PROLES. Progeny, such issue as proceeds from a lawful marriage; and, in its enlarged sense, it signifies any children.

PROLETARIUS, civil law. One who has no property to be taxed; and paid a tax only on account of his cliildren, proles; a person of mean or common extraction. The word has become Frenchified, proletaire signifying one of the common people.

PROLICIDE, med. jurisp. Medical jurists have employed this word to designate the destruction of the human divided the subject into foeticide, (q. v.) or the destruction of the foetus in utero; and infanticide, (q. v.) or the destruction of the new−born infant. Ryan, Med. Jur. 137.

PROLYTAE, Rom. civil law. The term used to denominate students of law during the fifth and last year of their studies. They were left during this year, very much to their own direction, and took the name (prolytoi) Prolytae omnino soluti. They studied chiefly the code and the imperial constitutions. See Dig. Proef. Prim. Const. 2; Calvini Lex ad Voc.

PROLIXITY. The unnecessary and superfluous statement of facts in pleading or in evidence. This will be

rejected as impertinent. 7 Price, 278, n.

PROLOCUTOR. In the ecclesiastical law, signifies a president or chairman of a convocation.

PROLONGATION. Time added to the duration of something.

2. When the time is lengthened during which a party is to perform a contract, the sureties of such a party are in general discharged, unless the sureties consent to such prolongation. See Giving time.

3. In the civil law the prolongation of time to the principal did not discharge the surety. Dig. 2, 14, 27; Id. 12, 1, 40.

PROMATERTERA. Great maternal aunt; the sister of one's grandmother. Inst. 3, 6, 3; Dig. 38, 10, 10, 14, et seq.

PROMISE, contr. An engagement by which the promisor contracts towards another to perform or do something to the advantage of the latter.

2. When a promise is reduced to the form of a written agreement under seal, it is called a covenant.

3. In order to be binding on the promisor, the promise must be made upon a sufficient con@ideration − when made without consideration, however, it may be binding in foro conscientice, it is not obliggtory in law, being nudtim pactum. Rutherf. Inst. 85; 18 Eng. C. L. Rep. 180, note a; Merl. Rep. h. t.

4. When a promise is made, all that is said at the time, in relation to it, must be considered; if, therefore, a man promise to pay all he owes, accompanied by a denial that he owes anything, no action will lie to enforce such a promise. 15 Wend. 187.

5. And when the promise is conditional, the condition must be performed before it becomes of binding force. 7 John. 36. Vide Condition. Promises are express or implied. Vide Undertaking, and 5 East, 17 2 Leon. 224, 5; 4 B. & A. 595.

PROMISE OF MARRIAGE. A contract mutually entered into by a man and a woman capable of contracting matrimony, that they will marry each other.

2. When one of the contracting parties violates his or her promise to the other, the latter may support an action against the former for damages, which are sometimes very liberally given. To entitle the plaintiff to recover damages, however, the defendant must not have been incapable of making the contract at, the time, and such incapacity must not have been known to the opposite party; as, if a married man were to promise to marry a woman, and he afterwards refused to do so.

3. The canon law punished these breaches of promises by ecclesiastical censures.

4. According to the ancient jurisprudence of France, damage's could have been recovered for the in execution of this engagement, and cases are reported which show a considerable liberality on this subject. M. Maynon, counsellor in the parliament of Paris, was condemned to sixty thousand livres damages; and a M. Hebert to fourteen thousand livres. D'Hericourt, Lois Ecclesiastiques, titre du Mariage, art. 1, n. 13. By the modern law of France, damages may be recovered for the violation of this contract.

5. In Germany and Holland damages may also be recovered. Voet, in Pandec tas, tit. de sponsalibus, n. 12; Huberus, in Pandectas, eod. tit. n. 19. And the Prussian code regulates the amount of damages to be paid under a variety of circumstances. Part 1, b. 2, tit. 2. Vide 2 Chit. Pr. 52; Rose, Civ. Ev. 193; 2 Car. & P. 631; 4 Esp. R. 258; 1 C. & P. 350; Holt, R. 151; S. C. 3 E. C. L. R. 57; 7 Cowen, 22; 1 John. Cas. 116; 6 Cowen, 254; 4 Cowen, 355; 7 Wend. 142.

PROMISES, evidence. When a defendant has been arrested, he is frequently in duced to make confessions in consequence of promises made to him, that if he will tell the truth, he will be either discharged or favored: in such a case evidence of the confession cannot be received, because being obtained by the flattery of hope, it comes in so questionable a shape, when it is to be considered evidence of guilt, that no credit ought to be given to it. 1 Leach, 263. This is the principle, but what amounts to a promise is not so easily defined. Vide Confession.

PROMISEE. A person to whom a promise has been made.

2. In general a promisee can maintain an action on a promise made to him, but when the consideration moves not from the promisee, but some other person, the latter, and not the promisee, has a cause of action, because he is the person for whose use the contract was made. Latch, 272; Poph. 81; 3 Cro. 77; 1 Raym, 271, 368; 4 B. & Ad. 434; 1 N. & M. 303; S. C. Cowp. 437; S. C. Dougl. 142. But see Carth. 5 2 Ventr. 307; 9 M. & W. 92) 96.

PROMISOR. One who makes a promise.

2. The promisor is bound to fulfil his promise, unless when it is contrary to law, as a promise to steal or to commit an assault and battery; when the fulfilment is prevented by the act of God, as where one has agreed to

teach another drawing and he loses his sight, so that he cannot teach it; when the promisee prevents the promisor from doing what he agreed to do; when the promisor has been discharged from his promise by the promisee, when the promise, has been made without a sufficient consideration; and, perhaps, in some other cases, the duties of the promisor are at an end.

PROMISSORY NOTE, contracts. A written promise to pay a certain sum of money, at a future time, unconditionally. 7 Watts & S. 264; 2 Humph. R. 143; 10 Wend. 675; Minor, R. 263; 7 Misso. 42; 2 Cowen, 536; 6 N. H. Rep. 364; 7 Vern. 22. A promissory note differs from a mere acknowledgment of debt, without any promise to pay, as when the debtor gives his creditor an I 0 U. (q. v.) See 2 Yerg. 50; 15 M. & W. 23. But see 2 Humph. 143; 6 Alab. R. 373. In its form it usually contains a promise to pay, at a time therein expressed, a sum of money to a certain person therein named, or to his order, for value received. It is dated and signed by the maker. It is never under seal.

2. He who makes the promise is called the maker, and he to whom it is made is the payee. Bayley on Bills, 1; 3 Kent, Com, 46.

3. Although a promissory note, in its original shape, bears no resemblance to a bill of exchange; yet, when indorsed, it is exactly similar to one; for then it is an order by the indorser of the note upon the maker to pay to the indorsee. The indorser is as it were the drawer; the maker, the acceptor; and the indorsee, the payee. 4 Burr. 669; 4 T. R. 148; Burr. 1224.

4. Most of the rules applicable to bills of exchange, equally affect promissory notes. No particular form is requisite to these instruments; a promise to deliver the money, or to be accountable for it, or that the payee shall have it, is sufficient. Chit. on Bills, 53, 54.

5. There are two principal qualities essential to the validity of a note; first, that it be payable at all events, not dependent on any contingency; 20 Pick. 132; 22 Pick. 132 nor payable out of any particular fund. 3 J. J. Marsh. 542; 5 Pike, R. 441; 2 Blackf. 48; 1 Bibb, 503; 1 S. M. 393; 3 J. J. Marsh. 170; 3 Pick. R. 541; 4 Hawks, 102; 5 How. S. C. R. 382. And, secondly, it is required that it be for the payment of money only; 10 Serg. & Rawle, 94; 4 Watts, R. 400; 11 Verm. R. 268; and not in bank notes, though it has been held differently in the state of New York. 9 Johns. R. 120; 19 Johns. R. 144.

6. A promissory note payable to order or bearer passes by indorsement, and although a chose in action, the holder may bring suit on it in his own name. Although a simple contract, a sufficient consideration is implied from the nature of the instrument. Vide 5 Com. Dig. 133, n., 151, 472 Smith on Merc. Law, B. 3, c. 1; 4 B. & Cr. 235 7 D. P. C. 598; 8 D. P. C. 441 1 Car. & Marsh. 16. Vide Bank note; Note; Reissuable note.

PROMOTERS. In the English law, are those who in popular or penal actions prosecute in. their own names and the king's, having part of the fines and penalties.

PROMULGATION. The order given to cause a law to be executed, and to make it public it differs from publication. (q. v.) 1 Bl. Com. 45; Stat. 6 H. VI., c. 4.

2. With regard to trade, unless previous notice can be brought home to the party charged with violating their provisions, laws are to be considered as beginning to operate in the respective collection districts only from the time they are received from the proper department by the collector. Paine's C. C. R. 32. See Paine's C. C. R. 2 3.

PROMUTUUM, civil law. A quasi contract, by which he who receives a certain sum of money, or a certain quantity of fungible things, which have been paid to him through mistake, contracts towards the payer the obligation of returning him as much. Poth. De l'Usure, 3eme part. s. 1, a. 1.

2. This contract is called promutuum, because it has much resemblance to that of mutuum. (q. v.) This resemblance consists, 1st. That in both a sum of money or some fungible things are required. 2d. That in both there must be a transfer of the property in the thing. 3d. That in both there must be returned the same amount or quantity of the thing received. Poth. h. t., n. 133. But though there is this general resemblance between the two, the mutuum differs essentially from the promutuum. The former is the actual contract of the parties, made expressly, but the 'latter is a quasi contract, which is the effect of an error or mistake. Id. 134; l Bouv. Inst. n. 1125−6.

PRONEPOS. Great Grandson.

PRONOTARY. An ancient word which signifies first notary. The same as prothonotary. (q. v.)

PRONURUS. The wife of a great grandson.

PROOF, practice. The conviction or persuasion of the mind of a judge or jury, by the exhibition of evidence, of the reality of a fact alleged: as, to prove, is to determine or persuade that a thing does or does not exist. 8 Toull. n.

2; Ayl. Parerg. 442; 2 Phil. Ev. 44, n, a. Proof is the perfection of evidence, for without evidence there is no proof, although, there may be evidence which does not amount to proof: for example, a man is found murdered at a spot where another had been seen walking but a short time before, this fact would be evidence to show that the latter was the murderer, but, standing alone, would be very far from proof of it.

2. Ayliffe defines judicial proof to be a clear and evident declaration or demonstration, of a matter which was before doubtful, conveyed in a judicial manner by fit and proper arguments, and likewise by all other legal methods; first, by proper arguments, such as conjectures, presumptions, indicia, and other adminicular ways and means; and, secondly, by legal method, or methods according to law, such as witnesses, public instruments, end the like. Parerg. 442 Aso. & Man. Inst. B. 3, t. 7.

PROPER. That which is essential, suitable, adapted, and correct.

2. Congress is authorized by art, 1, s. 8, of the constitution of the United States, "to make all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution of the United States, in any department. or officer thereof." See Necessary and Proper.

PROPERTY. The right and interest which a man has in lands and chattels to the exclusion of others. 6 Binn. 98; 4 Pet. 511; 17 Johns. 283; 14 East, 370; 11 East, 290, 518. It is the right to enjoy and to dispose of certain things in the most absolute manner as he pleases, provided he makes no use of them prohibited by law. See Things.

2. All things are not the subject of property the sea, the air, and the like, cannot be appropriated; every one may enjoy them, but he has no exclusive right in them. When things are fully our own, or when all others are excluded from meddling with them, or from interfering about them, it is plain that no person besides the proprietor, who has this exclusive right, can have any, claim either to use them, or to hinder him from disposing of them as, he pleases; so that property, considered as an exclusive right to things, contains not only a right to use those things, but a right to dispose of them, either by exchanging them for other things, or by giving them away to any other person, without any consideration, or even throwing them away. Rutherf. Inst. 20; Domat, liv. prel. tit. 3; Poth. Des Choses; 18 Vin. Ab. 63; 7 Com. Dig. 175; Com. Dig. Biens. See also 2 B. & C. 281; S. C. 9 E. C. L. R. 87; 3 D. & R. 394; 9 B. & C. 396; S. C. 17 E. C. L. R. 404; 1 C. & M. 39; 4 Call, 472; 18 Ves. 193; 6 Bing. 630.

3. Property is divided into real property, (q. v.) and personal property. (q. v.) Vide Estate; Things.

4. Property is also divided, when it consists of goods and chattels, into absolute and qualified. Absolute property is that which is our own, without any qualification whatever; as when a man is the owner of a watch, a book, or other inanimate thing: or of a horse, a sheep, or other animal, which never had its natural liberty in a wild state.

5. Qualified property consists in the right which men have over wild animals which they have redueed to their own possession, and which are kept subject to their power; as a deer, a buffalo, and the like, which are his own while he has possession of them, but as soon as his possession is lost, his property is gone, unless the animals, go animo revertendi. 2 Bl. Com. 396; 3 Binn. 546.

6. But property in personal goods may be absolute or qualified without ally relation to the nature of the subject−matter, but simply because more persons than one have an interest in it, or because the right of property is separated from the possession. A bailee of goods, though not the owner, has a qualified property in them; while the owner has the absolute property. Vide, Bailee; Bailment.

7. Personal property is further divided into property in possession, and property or choses in action. (q. v.)

8. Property is again divided into corporeal and incorporeal. The former comprehends such property as is perceptible to the senses, as lands, houses, goods, merchandise and the like; the latter consists in legal rights, as choses in action, easements, and the like.

9. Property is lost, in general, in three ways, by the act of man, by the act of law, and by the act of God.

10. − 1. It is lost by the act of man by, 1st. Alienation; but in order to do this, the owner must have a legal capacity to make a contract. 2d. By the voluntary abandonment of the thing; but unless the abandonment be purely voluntary, the title to the property is not lost; as, if things be thrown into the sea to save the ship, the right is not lost. Poth. h. t., n. 270; 3 Toull. ii. 346. But even a voluntary abandonment does not deprive the former owner from taking possessiou of the thing abandoned, at any time before another takes possession of it.

11. − 2. The title to property is lost by operation of law. 1st. By the forced sale, under a lawful process, of the property of a debtor to satisfy a judgment, sentence, or decree rendered against him, to compel him to fulfil his obligations. 2d. By confiscation, or sentence of a criminal court. 3d. By prescription. 4th. By civil death. 6th. By capture of a public enemy.

12. − 3. The title to property is lost by the act of God, as in the case of the death of slaves or animals, or in the

total destruction of a thing; for example, if a house be swallowed up by an opening in the earth during an earthquake.

13. It is proper to observe that in some cases, the moment that the owner loses his possession, he also loses his property or right in the thing: animals ferae naturae, as mentioned above, belong to the owner only while he retains the possession of them. But, in general,' the loss of possession does not impair the right of property, for the owner may recover it within a certain time allowed by law. Vide, generally, Bouv. Inst. Index, b. t.

PROPINQUITY. Kindred; parentage. Vide. Affinity; Consanguinity; Next of kin.

PROPIOS, or PROPRIOS, Span. law. Certain portions of ground laid off and reserved when a town was founded in Spanish America, as the unalienable property of the town, for the purpose of erecting public buildings, markets, &c., or to be used in any other way, under the direction of the municipality, for the advancement of the revenues, or the prosperity of the place. 12 Peters' R. 442, note.

PROPONENT, eccl. law. One who propounds a telling as "the party proponent doth allege and propound." 6 Eng. Ecclesiastical R. 356, n.

PROPOSAL. An offer for consideration or acceptance.

2. It is a general rule that a proposal offered to another for acceptance may be withdrawn at any time before it is accepted, provided that notice of the withdrawal be given to the party to whom it was made. A bid (q. v.) may be withdrawn at any time before acceptance; and a proposal by letter may be withdrawn at any time before, acceptance 1 Pick. 278; and, if accepted, it must be, in the very terms offered. 3 Wheat. 225. Vide Bid; Correspondence; Letter; Offer.

PROPOSITION. An offer to do something. Until it has been accepted, a proposition may be withdrawn by the party who makes it; and to be binding, the acceptance must be in the same terms, without any variation. Vide Acceptance; Offer; To retract; and 1 L. R. 190; 4 L. R. 80.

PROPOSITUS. The person proposed. In making genealogical tables, the person whose relations it is desirous to find out, is called the propositus.

TO PROPOUND. To offer, to propose; as, the onus probandi in every case lies upon the party who propounds ia will. 1 Curt. R. 637; 6 Eng. Eccl. R. 417.

PROPRES, French law. The term propres or biens propres, is used to denote that property which has come to an individual from his relations, either in a direct line, ascending or descending, or from a collateral line, whether the same have come by operation of law or by devise. Propres is used. in opposition to acquets. Poth. Des. Propres; 2 Burge, Confl. of Laws, 61; 2 L. R. S.

PROPRIA PERSONA. In his own person. It is a rule in pleading that pleas to the jurisdiction of the court must be pleaded in propria persona, because, if pleaded by attorney, they admit the jurisdiction, as an attorney is an officer of the court, and he is presumed to plead after having obtained leave, which admits the jurisdiction. Lawes on Pl. 91.

2. An appearance may be in propria persona, and need not be by attorney.

PROPRIETARY. In its strict sense, this word signifies one who is master of his actions, and who has the free disposition of his property. During the colonial government of Pennsylvania, William Penn was called the proprietary.

2. The domain which William Penn and his family had in the state, was, during the Revolutionary war, divested by the act of June 28, 1779, from that family and vested in the commonwealth for the sum which the latter paid to them of one hundred and thirty thousand pounds sterling.

PROPRIETATE PROBANDA. The name of a writ. See De proprietate probanda.

PROPRIETOR. The owner. (q. v.)

PROPRIO VIGORE. By its own force or vigor. This expression is frequently used in construction. A phrase is said to have a certain meaning proprio vigore.

PROPTER AFFECTUM. For or on account of some affection or prejudice. A juryman may be challenged propter affectum; as, because he is related to the party has eaten at his expense, and the like. See Challenge, practice.

PROPTER AFFECTUM. On account or for some defect. This phrase is frequently used in relation to challenges. A juryman may be challenged propter defectum; as, that he is a minor, an alien, and the like. See Challenge, practice.

PROPTER DELICTUM. For or on account of crime. A juror may be challenged propter delictum, when he has been convicted of an infamous crime. See Challenge, practice.

PROROGATED JURISDICTION, Scotch law. That jurisdiction, which, by the consent of the parties, is conferred upon a judge, who, without such consent, would be incompetent. Ersk. Prin. B. 1, t. 2, n. 15.

2. At common law, when a party is entitled to some privilege or exemption from jurisdiction, he may waive it, and then the jurisdiction is complete; but the consent cannot give jurisdiction.

PROROGATION. To put off to another time. It is generally applied to the English parliament, and means the continuance of it from one day to another; it differs from adjournment, which is a continuance of it from one day to another in the same session. 1 Bl. Com. 186.

2. In the civil law, prorogation signifies the time given to do a thing beyond the term prefixed. Dig. 2, 14, 27, 1. See Prolongation.

PROSCRIBED, civil law. Among the Romans, a man was said to be proscribed when a reward was offered for his head; but the term was more usually applied to those who were sentenced to some punishment which carried with it the consequences of civil death. Code, 9; 49.

PROSECUTION, crim. law. The means adopted to bring a supposed offender to justice and punishment by due course of law.

2. Prosecutions are carried on in the name of the government, and have for their principal object the scourity and happiness of the people in general. Hawk. B. 2, c. 25, s. 3; Bac. Ab. Indictment, A 3.

3. The modes most usually employed to carry them on, are by indictment; 1 Chit. Cr. Law, 132; presentment of a grand jury; Ibid. 133; coroner's inquest; Ibid. 134; and by an information. Vide Merl. Repert. mot Accusation.

PROSECUTOR, practice. He who prosecutes another for a crime in the name of the government.

2. Prosecutors are public or private. The public prosecutor is an officer appointed by the government, to prosecute all offences; he is the attorney general or his deputy.

3. A private prosecutor is one who prefers an accusation against a party whom be suspects to be guilty. Every man may become a prosecutor, but no man is bound except in some few of the more enormous offences, as treason, to be one but if the prosecutor should compound a felony, he will be guilty of a crime. The prosecutor has an inducement to prosecute, because he cannot, in many cases, have any civil remedy until he has done his duty to society by an endeavor to bring the offender to justice. If a prosecutor act from proper motives, me will not be responsible to the party in damages, though he was mistaken in his suspicions; but if, from a motive of revenge, he institute a criminal prosecution without any reasonable foundation, he may be punished by being mulcted in damages in an action for a malicious prosecution.

4. In Pennsylvania a defendant is not bound to plead to an indictment where there is a private prosecutor, until his name shall have been indorsed on the indictment as such, and on acquittal of the defendant, in all cases except where the charge is for a felony, the jury may direct that he shall pay the costs. Vide 1 Chit. Cr. Law, 1 to 10; 1 Phil. Ev. Index, h. t.; 2 Virg. Cas. 3, 20; 1 Dall. 5; 2 Bibb. 210; 6 Call. 245; 5 Rand. 669; and the article Informer.

PROSPECTIVE. That which is applicable to the future; it is used in opposition to retrospective. To be just, a law ought always to be prospective. 1 Bouv. Inst. n. 116.

PROSTITUTION. The common lewdness of a woman for gain.

2. In all well regulated communities this has been considered a heinous offence, for which the woman may be punished, and the keeper of a house of prostitution may be indicted for keeping a common nuisance.

3. So much does the law abhor this offence, that a landlord cannot recover for the use and occupation of a house let for the purpose of prostitution. 1 Esp. Cas. 13; 1 Bos. & Pull. 340, n.

4. In a figurative sense, it signifies the bad use which a corrupt judge makes of the law, by making it subservient to his interest; as, the prostitution of the law, the prostitution of justice.

PROTECTION, merc. law, The name of a document generally given by notaries public, to sailors and other persons going abroad, in which is certified that the bearer therein named, is a citizen of the United States.

PROTECTION, government. That benefit or safety which the government affords to the citizens.

PROTECTION, Eng. law. A privilege granted by the king to a party to an action, by which he is protected from a judgment which would otherwise be rendered against him. Of these protections there are several kinds. F. N. B. 65.

PROTEST, mar. law. A writing, attested by a justice of the peace or a consul, drawn by the master of a vessel, stating the severity of a voyage by which a ship has suffered, and showing it was not owing to the neglect or misconduct of the master. Vide Marsh. Ins. 715, 716. See 1 Wash. C. R. 145; Id. 238; Id. 408, n.; 1 Pet. C. R. 119; 1 Dall. 6; Id. 10; Id. 317; 2 Dall. 195; 3 Watts & Serg. 144; 3 Binn. 228, n.; 1 Yeates, 261.

PROTEST, legislation. A declaration made by one or more members of a legis lative body that they do not agree with some act or resolution of the body; it is usual to add the reasons which the protestants have for such a dissent.

PROTEST, contracts. A notarial act, made for want of payment of a promissory note, or for want of acceptance or payment of a bill of exchange, by a notary public, in which it is declared that all parties to such instruments will be held responsible to the holder for all damages, exchanges, reexchanges, &c.

2. There are two kinds of protest, namely, protest for non−acceptance, and protest for non−payment. When a protest is made and notice of the non−payment or non−acceptance given to the parties in proper time, they will be held responsible. 3 Kent, Com. 63; Chit. on Bills, 278; 3 Pardes. n. 418 to 441; Merl. Repert. h. t.; COID. Dig. Merchant, F 8, 9, 10; Bac. Ab. Merchant, &c. M 7.

3. There is also a species of protest, common in England, which is called protest for better security. It may be made when a merchant who has accepted a bill becomes insolvent, or is publicly reported to have failed in his credit, or absents himself from change, before the bill he has accepted becomes due, or when the holder has any just reason to suppose it will not be paid; and on demand the acceptor refuses to give it. Notice of such protest must, as in other cases, be sent by the first post. 1 Ld. Raym. 745; Mar. 27.

4. In making the protest, three things are to be done: the noting; demanding acceptance or payment or, as above, better security and drawing up the protest. 1. The noting, (q. v.) is unknown to the law as distinguished from the protest. 2. The demand, (q. v.) which must be made by a person having authority to receive the money. 3. The drawing up of the protest, which is a mere matter of form. Vide Acceptance; Bills of Exchange.

PROTESTANDO, pleading. According to Lord Coke, Co. Litt. 124, it is an exclusion of a conclusion. It has been more fully defined to be a saving to the party who takes it, from being concluded by any matter alleged or objected against him, upon which he cannot join issue. Plowd. 276, b; Finch's L. 359, 366, Lawes, Pl. 141.

2. Matter on which issue may be joined, whether it be the gist of the action, plea, replication or other pleading, cannot be taken by protestation; Plowd. Com. 276, b; although a man may take by protestation matter that he cannot plead, as in an action for taking goods of the value of one hundred dollars, the defendatn may make protestation that they were not worth more than fifty dollars. It is obvious that a protestation, repugnant to or inconsistent with the gist of the plea, &c., cannot be of any benefit to the party making it. Bro. Abr. tit. Protestation, pl. 1, 5. It is also idle and superfluous to make protestation of the same thing that is traversed by the plea; Plowd. 276, b: or of any matter of fact which must necessarily depend upon another fact protested against; as, to protest that A made no will, and that he made no executor, which he could not do if there was no will. Id.

3. The common form of making a protestando is in these words, "Because pro− testing that," &c., excluding such matters of the adversary's pleading as are intended to be excluded in the protestando, if it be matter of fact; or if it be against the legal sufficiency of his pleading, "Because protesting that the plea by him above pleaded in bar, or by way of reply, or rejoinder, &c., as the case may be, is wholly insufficient in law." No answer is necessary to a protestando, because it is never to be tried in the action in which it is made, but of such as is excluded from any manner of consideration in that action. Lawes' Civ. Pl. 143.

4. Protestations are of two sorts; first, when a man pleads anything which he dares not directly affirm, or cannot plead for fear of making his plea double; as if, in conveying to himself by his plea a title to land, the defendant ought to plead divers descents from several persons, but dares not affirm that they were all seised at the time of their death; or, although he could do so, it would make his plea double to allege two descents, when one descent would be a sufficient bar, then the defendant ought to plead and allege the matter introducing the word "protesting," thus, protesting that such a one died seised, &c., and this the adverse party cannot traverse.

5. The other sort of protestation is, when a person is to answer two matters, and yet by law he can only plead one of them, then in the beginning of his plea he may say, protesting or not acknowledging such part of the matter to be true, and add, "but for plea in this behalf," &c., and so take issue, or traverse, or plead to the other part of the matter; and by this he is not concluded−by any of the rest of the matter, which he has by protestation so denied, but may afterwards take issue upon it. Reg. Plac. 70, 71; 2 Saund. 103 a, n. 1. See 1 Chit. Pl. 534; Arch. Civ. Pl. 245; Doct. Pl. 402; Com. Dig. Pleader, N; Vin. Abr. Protestation Steph. Pl. 235.

PROTESTATION. An asseveration made by taking God to witness. A protestation is a form of asseveration which approaches very nearly to an oath. Wolff, Inst. _375.

PROTHONOTARY. The title given to an officer who officiates as principal clerk of some courts. Vin Ab. h. t.

2. In the ecclesiastical law, the name of prothonotary is given to an officer of the court of Rome, he is so called because he is the first notary; the Greek word prootos signifying primus or first. These notaries have preeminence

over the other notaries, and, are put in the rank of prelates. There are twelve of them. Dict. de Jur. h. t.

PROTOCOL, civil law, international law. A record or register. Among the Romans, protocollunt was a writing at the head of the first page of the paper used by the notaries or tabellions. Nov. 44.

2. In France the minutes of notarial acts were formerly transcribed on registers, which were called protocols. Toull. Dr. Civ. Fr. liv. 3, t. 3, c. 6, s. 1, n. 413.

3. By the German law it signifies the minutes of any transaction. Eneye. Amer. Protocol. In the latter sense the word has of late been received into international law. Ibid.

PROTUTOR, civil law. He who not being the tutor of a pupil or minor, has administered his property or affairs as if he had been, whether he thought himself legally invested with the authority of a tutor, or not.

2. He who marries a woman who is tutrix, becomes, by the marriage, a protutor. The protutor is equally responsible as the tutor.

PROUT PATET PER RECORDUM. As appears by the record. This phrase is frequently used in pleading; as, for example, in debt on a judgment or other matter of record, unless when it is stated is an inducement, it is requisite after slowing the matter of record, to refer to it by the prout patet per recordum. 1 Chit. Pl. *356.

PROVINCE. Sometimes this signifies the district into which a country has been divided; as, the province of Canterbury, in England the province of Languedoc, in France. Sometimes it means a dependency or colony; as, the province of New Brunswick. It is sometimes used figuratively, to signify power or authority; as, it is the province of the court to judge of the law, that of the jury to decide on the facts.

PROVISION, com. law. The property which a drawer of a bill of exchange places in the hands of a drawee; as, for example, by remittances, or when the drawee is indebted to the drawer when the bill becomes due, provision is said to have been made. Acceptance always presumes a provision. See Code de Comm. art. 115, 116, 117.

PROVISION, French law. An allowance granted by a judge to a party for his support; which is to be paid before there is a definitive judgment. In a civil case, for example, it is an allowance made to a wife who is separated from her hushand. Dict. de Jurisp. h. t.

PROVISIONAL SEIZURE. A term used in Louisiana, which signifies nearly the same as attachment of property.

2. It is regulated by the Code of Practice as follows, namely: Art. 284. The plaintiff may, in certain caws, hereafter provided, obtain the provisional seizure of the property which he holds in pledge, or on which he has a privilege, in order to secure the payment of his claim.

3. Art. 285. Provisional seizure may be ordered in the following cases: 1. In executory proceedings, when the plaintiff sues on a title importing confession of judgment. 2. When a lessor prays for the seizure of furniture or property used in the house, or attached to the real estate which he has leased. 3. When a seaman, or another person, employed on board of a ship or water craft, navigating within the state, or persons having furnished materials for, or made repairs to such ship or water craft, prays that the same may be seized, and prevented from departing, until he has been paid the amount of his claim.

4. When the proceedings are in rem, that is to say, against the thing itself, which stands pledged for the debt, when the property is abandoned, or in cases where the owner of the thing is unknown or absent. Vide 6 N. S. 168; 8 N. S. 320; 7 N. S. 153; 1 Martin, R. 168; 12 Martin, R. 32.

PROVISIONS. Food for man; victuals.

2. As good provisions contribute so much to the health and comfort of man, the law requires that they shall be wholesome; he who sells unwholesome provisions, may therefore be punished for a misdemeanor. 2 East, P. C. 822; 6 East, R. 133 to 141; 3 M. & S. 10; 4 Campb. R. 10; 4 M. & S. 214.

3. And in the sale of provisions, the rule is, that the seller impliedly warrants that they are wholesome. 3 Bl. Com. 166.

PROVISO. The name of a clause inserted in an act of the legislature, a deed, a written agreement, or other instrument, which generally contains a condition that a certain thing shall or shall not be done, in order that an agreement contained in another clause shall take effect.

2. It always implies a condition, unless subsequent words change it to a covenant; but when a proviso contains the mutual words of the parties to a deed, it amounts to a covenant. 2 Co. 72; Cro. Eliz. 242; Moore, 707 Com. on Cov. 105; Lilly's Reg. h. t.; 1 Lev. 155.

3. A proviso differs from an exception. 1 Barn. k Ald. 99. An exception exempts, absolutely, from the operation of an engagement or an enactment; a proviso defeats their operation, conditionally. An exception takes out of an engagement or enactment, something which would otherwise be part of the subject−matter of it; a proviso avoids

them by way of defeasance or excuse. 8 Amer. Jurist, 242; Plowd. 361; Carter 99; 1 Saund. 234 a, note; Lilly's Reg. h. t.; and the cases there cited. Vide, generally Amer. Jurist, No. 16, art. 1; Bac. Ab. Conditions, A; Com. Dig. Condition, A 1, A 2; Dwar. on Stat. 660.

PROVOCATION. The act of inciting another to do something.

2. Provocation simply, unaccompanied by a crime or misdemeanor, does not justify the person provoked to commit an assault and battery. In cases of homicide, it may reduce the offence from murder to manslaughter. But when the provocation is given for the purpose of justifying or excusing an intended murder, and the party provoked is killed, it is no justification. 2 Gilb. Ev. by Lofft, 753.

3. The unjust provocation by a wife of her hushand, in consequence of which she suffers from his ill usage, will not entitle her to a divorce on the ground of cruelty; her remedy, in such cases, is by changing her manners. 2 Lee,, R. 172; 1 Hagg. Cons. Rep. 155. Vide Cruelty; To Persuade; 1 Russ. on Cr. B. 3, c. 1, s. 1, page 434, and B. 3, c. 3, s. 1, pa e 486; 1 East, P. C. 232 to 241.

PROVOST. A title given to the chief of some corporations or societies. In France, this title was formerly given to some presiding judges. The word is derived from the Latin praepositus.

PROXENETAE, civil law. Among the Romans these were persons whose functions somewhat resembled the brokers of modern commercial nations. Dig. 50, 14, 3; Domat, 1. 1, t. 17, _1, art. 1.

PROXIMITY. Kindred between two persons. Dig. 38, 16, 8.

PROXY. A person, appointed in the place of another, to represent him.

2. In the ecclesiastical law, a judicial proctor, or one who is appointed to manage another man's law concerns, is called a proxy. Ayl. Parerg.

3. The instrument by which a person is appointed so to act, is likewise called a proxy.

4. Proxies are also annual payments made by the parochial clergy to the bishop, &c., on visitations. Tom. Law Dictionary, h. t. Vide Rutherf. Inst. 253; Hall's Pr. 14.

5. The right of voting at an election of an incorporated company by proxy is not a general right, and the party claiming it must show a special authority for that purpose. Ang. on Corp. 67−69; 1 Paige's Ch. Rep. 590; 5 Day's Rep. 329; 5 Cowen, Rep. 426.

PUBERTY, civil law. The age in boys after fourteen years until full age, and in girls after twelve years until full age. Ayl. Pand. 63; Hall's Pract. 14; Toull. Dr. Civ. Fr. tom. 6, p. 100; Inst. 1, 22; Dig. 1, 7, 40, 1; Code, 5, 60, 3.

PUBLIC. By the term the public, is meant the whole body politic, or all the citizens of the state; sometimes it signifies the inhabitants of a particular place; as, the New York public.

2. A distinction has been made between the terms public and general, they are sometimes used as synonymous. The former term is applied strictly to that which concerns all the citizens and every member of the state; while the latter includes a lesser, though still a large portion of the community. Greenl. Ev. _128.

3. When the public interests and its rights conflict with those of an individual, the latter must yield. Co. Litt. 181. if, for example, a road is required for public convenience, and in its course it passes on the ground occupied by a house, the latter must be torn down, however valuable it may be to the owner. In such a case both law and justice require that the owner shall be fully indemnified.

4. This term is sometimes joined to other terms, to designate those things which have a relation to the public; as, a public officer, a public road, a public passage, a public house.

PUBLIC DEBT. That which is due or owing by the government.

2. The constitution of the United States provides, art. 6, s. 1, that "all debts contracted or engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation." It has invariably been the policy since the Revolution, to do justice to the creditors of the government. The public debt has sometimes been swelled to a large amount, and at other times it has been reduced to almost nothing.

PUBLIC ENEMY. This word, used in the singular number, designates a nation at war with the United States, and includes every member of such nation. Vatt. 1. 3, c. 5, _70. To make a public enemy, the government of the foreign country must be at war with the United States; for a mob, how numerous soever it may be, or robbers, whoever they may be, are never considered as a public enemy. 2 Marsh. Ins. 508; 3 Esp. R. 131, 132.

2. A common carrier is exempt from responsibility, whenever a loss has been occasioned to the goods in his charge by the act of a public enemy, but the burden of proof lies on him to show that the loss was so occasioned. 3 Munf. R. 239; 4 Binn. 127; 2 Bailey, 1 57. Vide Enemy; People.

PUBLIC PASSAGE. This term is synonymous with public highway, with this difference; by the latter, is understood a right to pass over the land of another; by the former is meant the right of going over the water which is on another's land. Carth. 193; Hamm. N. P. 195. See Passage.

PUBLICAN, civil law. A farmer of the public revenue; one who held a lease of some property from the public treasury. Dig. 39, 4, 1, 1; Id. 39, 4, 12, 3; Id. 39, 4, 13.

PUBLICATION. The act by which a thing is made public.

2. It differs from promulgation, (q. v.) and see also Toullier, Dr. Civ. Fr. Titre Preliminaire, n. 59, for the difference in the meaning of these two words.

3. Publication has different meanings. When applied to a law, it signifies the rendering public the existence of the law; when it relates to the opening the depositions taken in a case in chancery, it means that liberty is given to the officer in whose custody the depositions of witnesses in a cause are lodged, either by consent of parties, or by the rules or orders of the court, to show the depositions openly, and to give out copies of them. Pract. Reg. 297; 1 Harr. Ch. Pr. 345; Blake's Ch. Pr. 143. When it refers to a libel, it is its communication to a second or third person, or a greater number. Holt on Libels, 254, 255, 290; Stark. on Slander, 350; Holt's N. P. Rep. 299; 2 Bl. R. 1038; 1 Saund. 112, n. 3. And when spoken of a will, it signifies that the testator has done some act from which it can be concluded that he intended the instrument to operate as his will. Cruise, Dig. tit. 38, c. 5, s. 47; 3 Atk. 161; 4 Greenl. R. 220; 3 Rawle, R. 15; Com. Dig. Estates by devise, E 2. Vide Com. Dig. Chancery, Q; Id. Libel, B 1; Ibid. Action upon the case for defamation, G 4; Roscoe's Cr. Ev. 529; Bac. Ab. Libel, B; Hawk. P. C. B. 1, c. 73, s. 10; 3 Yeates' R. 128; 10 Johns. R. 442. As to the publication of an award, see 6 N. H. Rep. 36. See, generally, Bouv. Inst. Index, h. t.

PUBLICIANA, civil law. The name of an action introduced by the proctor Publicius, the object of which was to recover a thing which had been lost. Inst. 4, 6, 4; Dig. 6, 2 1, 16 et 17. Its effects were similar to those of our action of trover.

PUBLICITY. The doing of a thing in the view of all persons who choose to be present.

2. The law requires that courts should be open to the public, there can therefore be no secret tribunal, except the grand jury (q. v.) and all judgments are required to be given in public.

3. Publicity must be given to the acts of the legislature before they can be in force, but in general their being recorded in a certain public office is evidence of their publicity. Vide Promulgation; Publication.

PUBLISHER. One who does by himself or his agents make a thing publicly known; one engaged in the circulation of books, pamphlets, and other papers.

2. The publisher of a libel is responsible as if he were the author of it, and it is immaterial whether he has any knowledge of its contents or not; 9 Co. 59; Hawk. P. C. c. 73, _10; 4 Mason, 115; and it is no justification to him that the name of the author accompanies the libel. 10 John, 447; 2 Moo. & R. 312.

3. When the publication is made by writing or printing, if the matter be libelous, the publisher may be indicted for a misdemeanor, provided it was made by his direction or consent, but if he was the owner of a newspaper merely, and the publication was made by his servants or agents, without any consent or knowledge on his part, he will not be liable to a criminal prosecution. In either case he will be liable to an action for damages sustained by the party aggrieved. 7 John. 260.

4. In order to render the publisher amenable to the law, the publication must be maliciously made, but malice will be presumed if the matter be libelous. This presumption, however, will be rebutted, if the publication be made for some lawful purpose, as, drawing up a bill of indictment, in which the libelous words are embodied, for the purpose of prosecuting the libeler; or if it evidently appear the publisher did not, at the time of publication, know that the matter was libelous as, when a person reads a libel presence of others, without beforehand knowing it to be such. 9 Co. 59. See Libel; Libeler; Publication.

PUDICITY. Chastity; the abstaining from all unlawful carnal commerce or connexion. A married woman or a widow may defend her pudicity as a maid may her virginity. Vide Chastity; Rape.

PUDZELD Eng. law. To be free from the payment of money for taking of wood in any forest. Co. Litt. 233 a. The same as Woodgeld. (q. v.)

PUER. In its enlarged sense this word signifies a child of either sex; though in its restrained meaning it is applied to a boy only.

2. A case once arose which turned upon this question, whether a daughter could take lands under the description of puer, and it was decided by two judges against one that she was entitled. Dy. 337 b. In another case, it was

ruled the other way. Rob. 33.

PUERILITY, civil law. This commenced at the age of seven years, the end of the age of infancy, and lasted till the age of puberty, (q. v.) that is, in females till the accomplishment of twelve years, and in males, till the age of fourteen years fully accomplished. Ayl. Pand. 63.

2. The ancient Roman lawyers divided puerility into proximus infantiae, as it approached infancy, and into proximus pubertati, as it became nearer to puberty. 6 Toullier, n. 100.

PUFFER, commerce, contracts. A person employed by the owner of property which is sold at auction to bid it up, who does so accordingly, for the purpose of raising the price upon bona fide bidders.

2. This is a fraud which at the choice of the purchaser invalidates the sale. 5 Madd. R. 37, 440; 3 Madd. R. 112; 12 Ves. 483; l Fonb. Eq. 227, n; 2 Kent, Com. 423; 11 Serg. & Rawle, 86; Cowp. 395; 3 Ves. jun. 628; 6 T. R. 642; 2 Bro. C. C. 326; 3 T. R. 93, 95; 1 P. A. Browne, Rep. 346; 2 Hayw. R. 328; Sugd. Vend. 16; 4 Harr. & McH. 282; 2 Dev. 126; 2 Const. Rep. 821;. 3 Marsh. 526.

PUIS DARREIN CONTINUANCE, pleading. These old French words signify since the last continuance.

2. Formerly there were formal adjournments or continuances of the proceedings in a suit, for certain purposes, from one term to another; and during the interval the parties were of course out of court. When any matter arose which was a ground of defence, since the last continuance, the defendant was allowed to plead it, which allowance was an exception to the general rule that the defendant can plead but one plea of one kind or class.

3. By the modern practice the parties are, from the day when, by the ancient practice, a continuance would have been entered, supposed to be out of court, and the pleading is suspended till the day arrives to which, by the ancient practice, the continuance would extend; at that day, the defendant is en−titled, if any new matter of defence has arisen in the interval, to plead it, according to the ancient plan puis darrein continuance, before the next continuance.

4. Pleas of this kind may be either in abatement or in bar; and may be pleaded, even after an issue joined, either in fact or in law, if the new matter has arisen after the issue was joined, and is pleaded before the next adjournment. Gould on Pl. c. 6, _123−126; Steph. Pl. 81, 398; Lawes on Pl. 173; 1 Chit. Pl. 637; 5 Peters , Rep. 232; 3 Bl. Com. 316; Arch. Civ, Pl. 353; Bac. Ab. Pleas, Q; 4 Mass. 659; 4 S. & R. 238; 1 Bailey, 369; 4 Verm. 545; 11 John. 4; 24; 1 S. & R. 310; 3 Bouv. Inst. n. 3014−18.

PUISNE. Since born; the younger; as, a puisne judge, is an associate judge.

PUNCTUATION, construction. The act or method of placing points (q. v.) in a written or printed instrument.

2. By the word point is here understood all the points in grammar, as the comma, the semicolon, the colon, and the like.

3. All such instruments are to be construed without any regard to the punc−tuation; and in a case of doubt, they ought to be construed in such a manner that they may have some effect, rather than in one in which they would be nugatory. Vide Toull. liv. 3, t. 2, c. 5, n. 430; 4 T. R. 65; Barringt. on the Stat. 394, n. Vide article Points.

PUNISHMENT, crim. law. Some pain or penalty warranted by law, inflicted on a person, for the commission of a crime or misdemeanor, or for the omission of the performance of an act required by law, by the judgment and command of some lawful court.

2. The right of society to punish, is derived by Becoaria, Mably, and some others, from a supposed agreement which the persons who composes the primitive societies entered into, in order to keep order and, indeed, the very existence of the state. According to others, it is the interest and duty of man to live in society; to defend this right, society may exert this principle in order to support itself, and this it may do, whenever the acts punishable would en−danger the safety of the whole. And Bentham is of opinion that the foundation of this right is laid in public utility or necessity. Delinquents are public enemies, and they must be disarmed and prevented from doing evil, or society must be destroyed. But, if the social compact has ever existed, says Livingston, its end must have been the preservation of the natural rights of the members and, therefore the effects of this fiction are the same with those of the theory which takes abstract justice as the foundation of the right to punish; for, this justice, if well considered, is that which assures to each member of the state, the free exercise of his rights. And if it should be found that utility, the last source from which the right to punish is derived, is so intimately united to justice that it is inseparable from it in the practice of law, it will follow that every system founded on one of these principles must be supported by the others.

3. To attain their social end, punishments should be exemplary, or capable of intimidating those who might be tempted to imitate the guilty; reformatory, or such as should improve the condition of the convicts; personal, or

such as are at least calculated to wound the feelings or affect the rights of the relations of the guilty divisible, or capable of being graduated and proportioned to the offence, and the circumstances of each case; reparable, on account of the fallibility of human justice.

4. Punishments are either corporal or not corporal. The former are, death, which is usually denominated capital punishment; imprisonment, which is either with or without labor; vide Penitentiary; whipping, in some states, though to the honor of several of them, it is not tolerated in them; banishment and death.

5. The punishments which are not corporal, are fines; forfeitures; suspension or deprivation of some political or civil right deprivation of office, and being rendered incapable to hold office; compulsion to remove nuisances.

6. The object of punishment is to reform the offender; to deter him and others from committing like offences; and to protect society. Vide 4 Bl. Com. 7 Rutherf. Inst. B. 1, ch. 18.

7. Punishment to be just ought to be graduated to the enormity of the offence. It should never exceed what is requisite to reform the criminal and to protect society; for whatever goes beyond this, is cruelty and revenge, the relic of a barbarous age. All the circumstances under which the offender acted should be considered. Vide Moral Insanity.

8. The constitution of the United States, amendments, art. 8, forbids the infliction of "cruel and unusual punishments."

9. It has been well observed by the author of Principles of Penal Law, that "when the rights of human nature are not respected, those of the citizen are gradually disregarded. Those eras are in history found fatal to liberty, in which cruel punishments predominate. Lenity should be the guardian of moderate governments; severe penalties, the instruments of despotism, may give a sudden check to temporary evils, but they have a tendency to extend themselves to every class of crimes, and their frequency hardens the sentiments of the people. Une loi rigoureuse produit des crimes. The excess of the penalty flatters the imagination with the hope of impunity, and thus becomes an advocate with the offender for the perpetrating of the offence." Vide Theorie des Lois Criminelles, ch. 2; Bac. on Crimes and Punishments; Merl. Rep. mot Peine; Dalloz, Dict. mot Peine and Capital crimes.

10. Punishments are infamous or not infamous. The former continue through life, unless the offender has been pardoned, and are not dependant on the length of time for which the party has been sentenced to suffer imprisonment; a person convicted of a felony, perjury, and other infamous crimes cannot, therefore, be a witness nor hold any office, although the period for which he may have been sentenced to imprisonment, may have expired by lapse of time. As to the effect of a pardon, vide Pardon.

11. Those punishments which are not infamous, are such as are inflicted on persons for misdemeanors, such as assaults and batteries, libels, and the like. Vide Crimes; Infamy; Penitentiary.

PUNISHMENT OF DEATH. The deliberate killing, according to the forms of law,, of a person who has been lawfully convicted of certain crimes. See Capital crimes.

PUPIL, civil law. One who is in his or her minority. Vide. Dig. 1, 7; Id. 26, 7, 1, 2; Code, 6, 30, 18; Dig. 50, 16, 239. One who is in ward or guardianship.

PUPILLARITY, civil law. That age of a person’s life which included infancy and puerility. (q. v.)

PUR. A corruption of the French word par, by or for. It is frequently used in old French law phrases; as, pur autre vie. It is also used in the composition of words, as purparty, purlieu, purview.

PUR AUTRE VIE, tenures. These old French words signify, for another’s life. An estate is said to be pur autre vie, when a lease is made of lands or tenements to a man, to hold for the life of another person. 2 Bl. Com. 259; 10 Vin. Ab. 296; 2 Supp. to Ves. Jr. 41.

PURCHASE. In its most enlarged and technical sense, purchase signifies the lawful acquisition of real estate by any means whatever, except descent. It is thus defined by Littleton, section 12. "Purchase is called the possession of lands or tenements that a man hath by his own deed or agreement, unto which possession he cometh, not by title of descent from any of his ancestors or cousins, but by his own deed."

2. It follows, therefore, that not only when a man acquires an estate by buying it for a good or valuable consideration, but also when it is given or devised to him be acquires it by purchase. 2 Bl. Com. 241.

3. There are six ways of acquiring a title by purchase, namely, 1. By, deed. 2. By devise. 3. By execution. 4. By prescription. 5. By possession, or occupancy. 6. By escheat. In its more limited sense, purchase is applied only to such acquisitions of lands as are obtained by way of bargain and sale for money, or some other valuable consideration. Id. Cruise, Dig. tit. 30, s. 1, to 4; 1 Dall. R. 20. In common parlance, purchase signifies the buying of real estate and of goods and chattels.

PURCHASER, contracts. A buyer, a vendee.

2. It is a general rule that all persons, capable of entering into contracts, may become purchasers both of real and personal property.

3. But to this rule there are several exceptions. 1. There is a class of persons who are incapable of purchasing except sub modo; and, 2. Another class, who, in consequence of their peculiar relation with regard to the owners of the thing sold, are totally incapable of becoming purchasers, while that relation exists.

4. − 1. To the first class belong, 1st. Infants under the age of twenty−one years, who may purchase, and at their full age bind themselves by agreeing to the bargain, or waive the purchase without alleging any cause for so doing. If they do not agree to the purchase after their full age, their heirs may waive it in the same manner as they themselves could have done. Cro. Jac. 320; Rolle's Ab. 731 K; Co. Litt. 2 b; 6 Mass. R. 80; 6 John. R. 257.

5. − 2d. Femes covert, who are capable of purchasing but their hushands may disagree to the contract, and divest the whole estate; the hushand may further recover back the purchase−money. 1 Ld. Raym. 224; 1 Madd. Ch. R. 258; 6 Binn. R. 429. When the hushand neither, agrees nor disagrees, the purchase will be valid. After the hushand's death, the wife may waive the purchase without assigning any cause for it, although the hushand may have agreed to it; and if, after her hushand's death, she do not agree to it, her heirs may waive it. Co. Lift. 3 a; Dougl. R. 452.

6. − 3d. Lunatics, or idiots, who are capable of purchasing. It seems that although they recover their senses, they cannot of themselves waive the purchase; yet if, after recovering their senses, they agree to it, their heirs cannot set it aside. 2 Bl. Com. 291; and see 3 Day's R. 101. Their heirs may avoid the purchase when they die during their lunacy or idiocy. Co. Litt. 2 b.

7. − 2. It is a general rule that trustees 2 Bro. C. C. 400; 3 Bro. C. C. 483; 1 John. Ch. R. 36; 3 Desaus. Ch. R. 26; 3 Binn. Y. 59; unless they are nominally so, to preserve contingent remainders; 11 Ves, Jr. 226; agents; 8 Bro. P. C; 42; 13 Ves. Jr. 95; Story, Ag. _9; commissioners of bankrupts; assignees of bankrupts; solicitors to the commission; 6 Ves. Jr. 630, n. b.; auctioneers and creditors who have been consulted as to the mode of sale; 6 Ves. Jr. 617; 2 Johns. Ch. R. 257; or any other persons who, by their connexion with the owner, or by being employed concerning his affairs, have acquired a knowledge of his property, are generally incapable of purchasing such property themselves. And so stern is the rule, that when a person cannot purchase the estate himself, he cannot buy it, as agent for another; 9 Ves. Jr. 248; nor perhaps employ a third person to bid for it on behalf of a stranger; 10 Ves. Jr. 381 for no court is equal to the examination and ascertanment of the truth in a majority of such cases. 8 Ves. Jr. 345.

8. The obligations of the purchaser resulting from the contract of sale, are, 1. To pay the price agreed upon in the contract. 2. To take away the thing purchased, unless otherwise agreed upon; and, 3. To indemnify the seller for any expenses he may have incurred to preserve it for him. Vide Sugd. on Vend. Index, h. t.; Ross on Vend. Index, h. t.; Long on Sales, Index, h. t.; 2 Supp. to Ves. Jr. 449, 267, 478; Yelv. 45; 2 Ves. Jr. 100; 8 Coin. Dig. 349; 3 Com. Dig. 108.

PURCHASE−MONEY. The consideration which is agreed to be paid by the purchaser of a thing in money. It is the duty of the purchaser to pay the purchase−money as agreed upon in making the contract, and, in case of conveyance of an estate before it is paid, the vendor is entitled according to the laws of, England, which have been adopted in several of the states, to a lien on the estate sold for the purchase−money so remaining unpaid. This is called an equitable lien. This doctrine is derived from the civil law. Dig. 18, 1, 19. The case of Chapman v. Tauner, 1 Vera. 267, decided in 1684, is the first where this doctrine was adopted. 7 S. & R. 73. It was strongly opposed, but is now firmly established in England, and in the United States. 6 Yerg. R. 50; 4 Bibb, R. 239 1 John. Ch. R. 308; 7 Wheat. R. 46, 50 5 Monr. R. 287; 1 liar. & John. 106; 4 Har. & John. 522; 1 Call. R. 414; 1 Dana, R. 576; 5 Munf. R. 342; Dev. Eq. R. 163 4 Hawks, R. 256; 5 Conn. 468; 2 J. J. Marsh, 330; 1 Bibb. R. 590.

2. But the lien of the seller exists only between the parties and those having notice that the purchase−money has nut been paid. 3 J. J. Marsh. 557; 3 Gill & John. 425 6 Monr. R. 198.

PURE DEBT. In Scotland, this name is given to a debt actually due, in contradistinction to one which is to become due at a future day certain, which is called a future debt: and one due provisionally, in a certain event, which is called a contingent debt. 1 Bell's Com. 315, 5th ed.

PURE OR SIMPLE OBLIGATION. One which is not suspended by any condition, whether it has been contracted without any condition, or when thus contracted, the condition has been performed. Poth. Obl. n. 176.

PURE PLEA, equity pleading. One which relies wholly on some matter dehors the bill as for example, a plea of

a release or a settled account.

2. Pleas not pure, are so called in contradistinction to pure pleas; they are sometimes also denominated negative pleas. 4 Bouv. Inst. n. 4275.

PURGATION. The clearing one's self of an offence charged, by denying the guilt on oath or affirmation.

2. There were two sorts of purgation, the vulgar, and the canonical.

3. Vulgar purgation consisted in superstitious trials by hot and cold water, by fire, by hot irons, by batell, by corsned, &c., which modes of trial were adopted in times of ignorance and barbarity, and were impiously called judgments of God.

4. Canonical purgation was the act of justifying one's self, when accused of some offence in the presence of a number of persons, worthy of credit, gen−erally twelve, who would swear they believed the accused. See Compurgator; Wager of Law.

5. In modern times, a man may purge himself of an offence, in some cases where the facts are within his own knowledge; for example, when a man is charged with a contempt of court, he may purge himself of such contempt, by swearing that in doing the act charged, he did not intend to commit a contempt.

PURLIEU, Eng. law. A space of land near a forest, known by certain boundaries, which was formerly part of a forest, but which has been separated from it.

2. The history of purlieus is this. Henry III., on taking possession of the throne, manifested so great a taste for forests that he enlarged the old ones wherever he could, and by this means enclosed many estates, which had no outlet to the public roads, and things increased in this way until the reign of King John, when the public reclamations were so great that much of this land was disforested; that is, no longer had the privileges of the forests, and the land thus separated bore the name of purlieu.

PURPARTY. That part of an estate, which having been held in common by parceners, is by partition allotted to any of them. To make purparty is to divide and sever the lands which fall to parceners. Old Nat. Br. 11.

PURPORT, pleading. This word means the substance of a writing, as it appears on the face of it, to the eye that reads it; it differs from tenor. (q. v.), 2 Russ. on Cr. 365; 1 Chit. Cr. Law, 235; 1 East, R. 179, and the cases in the notes.

PURPRESTURE. According to Lord Coke, purpresture, is a close or enclosure, that is, when one encroaches or makes several to himself that which ought to be in common to many; as if an individual were to build between high and low water−mark on the side of a public river. In England this is a nuisance; and in cases of this kind an injunction will be granted, on ex parte affidavits, to restrain such a purpresture and nuisance. 2 Bouv. Inst. n, 2382; 4 Id. n. 3798; 2 Inst. 28; and see Skene, verbo Pourpr esture; Glanville, lib. 9, ch. 11, p. 239, note Spelm. Gloss. Purpresture Hale, de Port. Mar.; Harg. Law Tracts, 84; 2 Anstr. 606; Cal. on Sew. 174 Redes. Tr. 117.

PURSE. In Turkey the sum of five hundred dollars is called a purse. Merch. Dict. h. t.

PURSER. The person appointed by the master of a ship or vessel, whose duty it is to take care of the ship's books, in which everything on board is inserted, as well the names of mariners as the articles of merchandise shipped. Rocc. Ins. note.

2. The act of congress concerning the naval establishment, passed March 30, 1812, provides, _6, That the pursers in the Navy of the United States shall be appointed by the president of the United States, by and with the advice and consent of the senate; and that, from and after the first day of May next, no person shall act in the character of purser, who shall not have been thus first nominated and appointed, excepting pursers on distant service, who shall not remain in service after the first day of July next, unless nominated and appointed as aforesaid. And every purser, before entering upon the duties of his office, shall give bond, with two or more sufficient sureties, in the penalty of ten thousand dollars, conditioned faithfully to perform all the duties of purser in the United States.

3. And by the supplementary act to this act concerning the naval establishment, passed March 1, 1817, it is enacted, _1, That every purser now in service, or who may hereafter be appointed, shall, instead of the bond required by the act to which this is a supplement, enter into bond, with two or more sufficient sureties, in the penalty of twenty−five thousand dollars, conditioned for the faithful discharge of all his duties as purser in the navy of the United States, which said sureties shall be approved by the judge or attorney of the United States for the district in which such purser shall reside.

PURSUER, canon law. The name by which the complainant or plaintiff is known in the ecclesiastical courts. 3 Eng. Eccl. R. 350.

PURVEYOR. One employed in procuring provisions. Vide Code, 1, 34.

PURVIEW. That part of an act of the legislature which begins with the words "Be it enacted," &c., aud ends before the repealing clause. Cooke's R. 330 3 Bibb, 181. According to Cowell, this word also signifies a conditional gift or grant. It is said to be derived from the French pourvu, provided. It always implies a condition. Interpreter, h. t.

TO PUT, pleading. To select, to demand; as, the said C D puts himself upon the country; that is, he selects the trial by jury, as the mode of settling the matter in dispute, and does not rely upon an issue in law. Gould, Pl. c. 6. part 1, _19.

PUTATIVE. Reputed to be that which is not. The word is frequently used, as putative father, (q. v.) putative marriage, putative wife, and the like. And Toullier, tome 7, n. 29, uses the words putative owner, proprietare putatif. Lord Kames uses the same expression. Princ. of Eq. 391.

PUTATIVE FATHER. The reputed father.

2. This term is most usually applied to the father of a bastard child.

3. The putative father is bound to support his children, and is entitled to the guardianship and care of them in preference to all persons but the mother. 1 Ashm. It. 55; and vide 7 East, 11; 5 Esp. R. 131; 1 B. & A. 491; Bott, P. L. 499; 1 C. & P. 268; 1 B. & B. 1; 3 Moore, R. 211; Harr. Dig. Bastards, VlI.; 3 C. & P. 36.

PUTATIVE MARRIAGE. This marriage is described by jurists as "matrimonium putativum, id est, quod bona fide et solemnitur saltem, opinions conjugis unius justa contractum inter personas vetitas jungi." Hertius, h. t. It is a marrriage contracted in good faith, and in ignorance of the existence of those facts which constituted a legal impediment to the intermarriage.

2. Three circumstances must concur to constitute this species of marriage. 1st. There must be a bona fides. One of the parties, at least, must have been ignorant of the impediment, not only at the time of the marriage, but must also have continued ignorant of it during his or her life, because, if he became aware of it, he was bound to separate himself from his wife. 2d. The marriage must be duly solemnized. 3d. The marriage must have been considered lawful in the estimation of the parties, or of that party who alleges the bona fides.

3. A marriage in which these three circumstances concur, although null and void, will have the effect of entitling the wife, if she be in good faith, to enforce the rights of property, which would have been competent to her if the marriage had been valid, and of rendering the children of such marriage legitimate.

4. This species of marriage was not recognized by the civil law; it was introduced by the canon law. It is unknown to the law of the United States, and in England and Ireland. In France it has been adopted by the Code Civil, art. 201, 202. In Scotland, the question has not been settled. Burge on the Confl. of Laws, 151, 2.

PUTTING IN FEAR. These words are used in the definition of a robbery from the person; the offence must have been committed by putting in fear the person robbed. 3 Inst. 68; 4 Bl. Com. 243.

2. This is the circumstance which distinguishes robbery from all other larcenies. But what force must be used, or what kind of fears excited, are questions very proper for discussion. The goods must be taken against the will (q. v.) of the possessor. For. 123.

3. There must either be a putting in fear or actual violence, though both need not be positively shown; for the former will be inferred from the latter, and the latter is sufficiently implied in the former. For example, when a man is suddenly knocked down and robbed while he is senseless, there is no fear,, yet in consequence of the violence, it is presumed. 2 East, P. C. 711; 4 Binn. Rep. 379; 3 Wash. C. C. Rep. 209; 2 Chit. Cr. Law, 803.

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