E.

E CONVERSO. On the other side or hand; on the contrary.

E PLURIBUS UNUM. One from more. The motto of the arms of the United States.

EAGLE, money. A gold coin of the United States, of the value of ten dollars. It weighs two hundred and fifty−eight grains. Of one thousand parts, nine hundred are of pure gold, and one hundred of all Act of January 18, 1837, 4 Sharsw. Cont. of Story's L. U. S. 2523, 4. Vide Money.

EAR−WITNESS. One who attests to things he has heard himself.

EARL, Eng. law. A title of nobility next below a marquis and above a viscount.

2. Earls were anciently called comites, because they were wont comitari regem, to wait upon the king for counsel and advice. He was also called shireman, because each earl had the civil government of a shire.

3. After the Norman conquest they were called counts, whence the shires obtained the names of counties. They have now nothing to do with the government of counties, which has entirely devolved on the sheriff, the earl's deputy, or vice comes.

EARLDOM. The seigniory of an earl; the title and dignity of an earl.

EARNEST, contracts. The payment of a part of the price of goods sold, or the delivery of part of such goods, for the purpose of binding the contract.

2. The effect of earnest is to bind the goods sold, and upon their being paid for without default, the buyer is entitled to them. But notwithstanding the earnest, the money must be paid upon taking away the goods, because no other time for payment is appointed; earnest only binds the bargain, and gives the buyer a right to demand, but a demand without payment of the money is void; after earnest given the vendor cannot sell the goods to another, without a default in the vendee, and therefore if the latter does not come and pay, and take the goods, the vendor ought to go and request him, and then if he does not come, pay for the goods and take them away in convenient time, the agreement is dissolved, and he is at liberty to sell them to any other person. 1 Salk. 113: 2 Bl. Com. 447; 2 Kent, Com. 389; Ayl. Pand. 450; 3 Campb. R. 426.

EASEMENTS, estates. An easement is defined to be a liberty privilege or advantage, which one man may have in the lands of another, without profit; it may arise by deed or prescription. Vide 1 Serg. & Rawle 298; 5 Barn. & Cr. 221; 3 Barn. & Cr. 339; 3 Bing. R. 118; 3 McCord, R. 131, 194; 2 McCord, R. 451; 14 Mass. R. 49 3 Pick. R. 408.

2. This is an incorporeal hereditament, and corresponds nearly to the servitudes or services of the civil law. Vide Lilly's Reg. h. t. 2 Bouv. Inst. n. 1600, et seq.; 3 Kent, Com. 344: Cruise, Dig. t. 31, c. 1, s. 17; 2 Hill. Ab. c. 5; 9 Pick. R. 51; 1 Bail. R. 56; 5 Mass. R. 129; 4 McCord's R. 102; Whatl. on Eas. passim; and the article Servitude.

EASTER TERM, Eng. law. One of the four terms of the courts. It is now a fixed term beginning on the 15th of April and ending the 8th of May in every year. It was formerly a movable term.

EAT INDE SINE DIE. Words used on an acquittal, or when a prisoner is to be discharged, that he may go without day, that is, that he be dismissed. Dane's Ab. Index, h. t.

EAVES−DROPPERS, crim. law. Persons as wait under walls or windows or the eaves of a house, to listen to discourses, and thereupon to frame mischievous tales.

2. The common law punishment for this offence is fine, and finding sureties for good behaviour. 4 Bl. Com. 167; Burn's Just. h. t.; Dane's Ab. Index, h. t.; 1 Russ. Cr. 302.

3. In Tennessee, an indictment will not lie for eaves−dropping. 2 Tenn. R. 108.

ECCHYMOSIS, med. jur. Blackness. It is an extravasation of blood by rupture of capillary vessels, and hence it follows contusion; but it may exist, as in cases of scurvy, and other morbid conditions, without the latter. Ryan's Med. Jur. 172.

ECCLESIA. In classical Greek this word signifies any assembly, and in this sense it is used in Acts xix. 39. But ordinarily, in the New Testament, the word denotes a Christian assembly, and is rendered into English by the word church. It occurs thrice only in, the Gospels, viz. in Matt. xvi. 18, and xviii. 17; but very frequently in the other parts of the New Testament, beginning with Acts ii. 47. In Acts xix. 37, the word churches, in the common English version, seems to be improperly used to denote heathen temples. Figuratively, the word church is employed to signify the building set apart for the Christian assemblies; but the word eclesia is not used in the New Testament in that sense.

ECCLESIASTIC. A clergyman; one destined to the divine ministry, as, a bishop, a priest, a deacon. Dom. Lois Civ. liv. prel. t. 2, s. 2, n. 14.

ECCLESIASTICAL. Belonging to, or set apart for the church; as, distinguished from civil or secular. Vide Church.

ECCLESIASTICAL COURTS. English law. Courts held by the king's authority as supreme governor of the church, for matters which chiefly concern religion.

2. There are ten courts which may be ranged under this class. 1. The Archdeacon's Court. 2. The Consistory Court. 3. The Court of Arches. 4. The Court of Peculiars. 5. The Prerogative Court. 6. The Court of Delegates, which is the great court of appeals in all ecclesiastical causes. 7. The Court of Convocation. 8. The Court of Audience. 9. The Court of Faculties. 10. The Court of Commissioners of Review.

ECCLESIASTICAL LAW. By this phrase it is intended to include all those rules which govern ecclesiastical tribunals. Vide Law Canon.

ECCLESIASTICS, canon law. Those persons who compose the hierarchial state of the church. They are regular and secular. Aso & Man. Inst. B. 2, t. 5, c. 4, _1.

ECLAMPSIA PARTURIENTIUM, med. jur. The name of a disease accompanied by apoplectic convulsions, and which produces aberration of mind at childbirth. The word Eclampsia is of Greek origin − Significat splenaorem fulgorem effulgentiam, et emicationem quales ex ocuIis aliquando prodeunt. Metaphorice sumitur de emicatione flammae vitalis in pubertate et aetaeis vigore. Castelli, Lex. Medic.

2. An ordinary person, it is said, would scarcely observe it, and it requires the practised and skilled eye of a physician to discover that the−patient is acting in total unconsciousness of the nature and effect of her acts. There can be but little doubt that many of the tragical cases of infanticide proceed from this cause. The criminal judge and lawyer cannot inquire with too much care into the symptoms of this disease, in order to discover the guilt of the mother, where it exists, and to ascertain her innocence, where it does not. See two well reported cases of this kind in the Boston Medical Journal, vol. 27, No. 10, p. 161.

EDICT. A law ordained by the sovereign, by which he forbids or commands something it extends either to the whole country, or only to some particular provinces.

2. Edicts are somewhat similar to public proclamations. Their difference consists in this, that the former have authority and form of law in themselves, whereas the latter are at most, declarations of a law, before enacted by congress, or the legislature.

3. Among the Romans this word sometimes signified, a citation to appear before a judge. The edict of the emperors, also called constitutiones principum, were new laws which they made of their own motion, either to decide cases which they had foreseen, or to abolish or change some ancient laws. They were different from their rescripts or decrees. These edicts were the sources which contributed to the formation of the Gregorian, Hermogenian, Theodosian, and Justinian Codes. Vide Dig. 1, 4, 1, 1; Inst. 1, 2, 7; Code, 1, 1 Nov. 139.

EDICT PERPETUAL. The title of a compilation of all the edicts. This collection was made by Salvius Julianus, a jurist who was, selected by the emperor Adrian for the purpose, and who performed his task with credit to himself.

EDICTS OF JUSTINIAN. These are thirteen constitutions or laws of that prince, found in most editions of the corpus juris civilis, after the Novels. Being confined to matters of police in the provinces of the empire, they are of little use.

EFFECT. The operation of a law, of an agreement, or an act, is called its effect.

2. By the laws of the United States, a patent cannot be granted for an effect only, but it may be for a new mode or application of machinery to produce effects. 1 Gallis. 478; see 4 Mason, 1; Pet. C. C. R. 394; 2 N. H. R. 61.

EFFECTS. This word used simpliciter is equivalent to property or, worldly substance, and may carry the whole personal estate, when used in a will. 5 Madd. Ch. Rep. 72; Cowp. 299; 15 Ves. 507; 6 Madd. Ch. R. 119. But when it is preceded and connected with words of a narrower import, and the bequest is not residuary, it will be confined to species of property ejusdem generis with those previously described. 13 Ves. 39; 15 Ves. 826; Roper on Leg. 210.

EFFIGY, crim. law. The figure or representation of a person.

2. To make the effigy of a person with an intent to make him the object of ridicule, is a libel. (q. v.) Hawk. b. 1, c. 7 3, s. 2 14 East, 227; 2 Chit. Cr. Law, 866.

3. In France an execution by effigy or in effigy is adopted in the case of a criminal who has fled from justice. By the public exposure or exhibition of a picture or representation of him on a scaffold, on which his name and the

decree condemning him are written, he is deemed to undergo the punishment to which he has been sentenced. Since the adoption of the Code Civil, the practice has been to affix the names, qualities or addition, and the residence of the condemned person, together with an extract from the sentence of condemnation, to a post set upright in the ground, instead of exhibiting a portrait of him on the scaffold. Repertoire de Villargues; Biret, Vo cab.

EFFRACTION. A breach, made by the use of force.

EFFRACTOR. One who breaks through; one who commits a burglary.

EGO. I, myself. This term is used in forming genealogical tables, to represent the person who is the object of inquiry.

EIGNE, persons. This is a corruption of the French word aine, eldest or first born.

2. It is frequently used in our old law books, bastard eigne. signifies an elder bastard when spoken of two children, one of whom was; born before the marriage of his parents, and the other after; the latter is called mulier puisne. Litt. sect. 399.

EIRE, or EYRE, English law. A journey. Justices in eyre, were itinerant judges, who were sent once in seven years with a general commission in divers counties, to hear and determine such causes as were called pleas of the crown. Vide Justices in eyre.

EJECTMENT, remedies. The name of an action which lies for the recovery of the possession of real property, and of damages for the unlawful detention. In its nature it is entirely different from a real action. 2 Term Rep; 696, 700. See 17 S. & R. 187, and, authorities cited.

2. This subject may be considered with reference, 1st. To the form of the, proceedings. 2d. To the nature of the property or thing to be recovered. 3d. To the right to such property. 4th. To the nature of the ouster or injury. 5th. To the judgment.

3. − 1. In the English practice, which is still adhered to in some states, in order to lay the foundation of this action, the party claiming title enters upon the land, and then gives a lease of it to a third person, who, being ejected by the other claimant, or some one else for him, brings a suit against, the ejector in his own name; to sustain the action the lessee must prove a good title in the lessor, and, in this collateral way, the title is tried. To obviate the difficulty of proving these forms, this action has been made, substantially, a fictitious process. The defendant agrees, and is required to confess that a lease was made to the plaintiff, that he entered under it, and has been ousted by the defendant, or, in other words, to admit lease, entry, and ouster, and that he will rely only upon his title. An actual entry, however, is still supposed, and therefore, an ejectment will not lie, if the right of entry is gone. 3 Bl. Com. 199 to 206. In Pennsylvania, New York, Arkansas, and perhaps other states, these fictions have all been abolished, and the writ of ejectment sets forth the possession of the plaintiff, and an unlawful entry on the part of the defendant.

4. − 2. This action is in general sustainable only for the recovery of the possession of property upon which an entry might in point of fact be made, and of which the sheriff could deliver actual possession: it cannot, therefore, in general, be sustained for the recovery of property which, in legal consideration, is not tangible; as, for a rent, or other incorporeal heriditaments, a water−course, or for a mere privilege of a landing held in common with other citizens of a town. 2 Yeates, 331; 3 Bl. Com. 206; Yelv. 143; Run. Eject. 121 to 136 Ad. Eject. c. 2; 9 John. 298; 16 John. 284.

5. − 3. The title of the party having a right of entry maybe in fee−simple, fee−tail, or for life or years; and if it be the best title to the property the plaintiff will succeed. The plaintiff must recover on the strength. of his title, and not on the weakness or deficiency of that of the defendant. Addis. Rep. 390; 2 Serg. & Rawle, 65; 3 Serg. & Rawle, 288; 4 Burr. 2487; 1 East, R. 246; Run. Eject. 15; 5 T. R. 110.

6. − 4. The injury sustained must in fact or in point of law have amounted to an ouster or dispossession of the lessor of the plaintiff, or of the plaintiff himself, where the fictions have been abolished; for if there be no ouster, or the defendant be not in possession at the time of bringing the action, the plaintiff must fail. 7 T. R. 327; 1 B. & P. 573; 2 Caines' R. 335.

7. − 5. The judgment is that the plaintiff do recover his term, of and in the tenements, and, unless the damages be remitted, the damages assessed by the jury with the costs of increase. In Pennsylvania, however, and, it is presumable, in all those states where the fictitious form of this action has been abolished, the plaintiff recovers possession of the land generally, and not simply a term of years in the land. See 2 Seam. 251; 4 B. Monr. 210; 3 Harr. 73; 1 McLean, 87. Vide, generally, Adams on Ej.; 4 Bouv. Inst. n., 3651, et seq.; Run. Ej.; Com. Dig. h. t.;

Dane's Ab. h. t.; 1 Chit. Pl. 188 to 193; 18 E. C. L. R. 158; Woodf. L. & T. 354 to 417; 2 Phil. Ev. 169.; 8 Vin. Ab. 323; Arch. Civ. Pl. 503; 2 Sell. Pr. 85; Chit. Pr. lndex, h. t.; Bac. Ab. h. t Doct. Pl. 227; Am. Dig. h. t.; Report of the Commissioners to Revise the Civil Code of Pennsylvania, January 16, 1835, pp. 80, 81, 83; Coop. Justinian, 448.

EJUSDEM GENERIS. Of the same kind.

2. In the construction of laws, wills and other instruments, when certain things are enumerated, and then a phrase is used which might be construed to include other things, it is generally confined to things ejusdem generas; as, where an act (9 Ann. C. 20) provided that a writ of quo warranto might issue against persons who should usurp "the offices of mayors, bailiffs, port reeves, and other offices, within the cities, towns, corporate boroughs, and places, within Great Britain," &c.; it was held that "other offices" meant offices ejusdem generis; and that the word "places" signified places of the same kind; that is, that the offices must be corporate offices, and the places must be corporate Places. 5 T. R. 375,379; 5 B . & C. 640; 8 D. & Ry. 393; 1 B. & C. 237.

3. So, in the construction of wills, when certain articles are enumerated, the terra goods is to be restricted to those ejusdem generis. Bac. Ab. Legacies, B; 3 Rand. 191; 3 Atk. 61; Abr. Eq. 201; 2 Atk. 113.

ELDEST. He or she who has the greatest age.

2. The laws of primogeniture are not in force in the United States; the eldest child of a family cannot, therefore, claim any right in consequence of being the eldest.

ELECTION. This term, in its most usual acceptation, signifies the choice which several persons collectively make of a person to fill an office or place. In another sense, it means the choice which is made by a person having the right, of selecting one of two alternative contracts or rights. Elections, then, are of men or things.

2. − _1. Of men. These are either public elections, or elections by companies or corporations.

3. − 1. Public elections. These should be free and uninfluenced either by hope or fear. They are, therefore, generally made by ballot, except those by persons in their representative capacities, which are viva voce. And to render this freedom as perfect as possible, electors are generally exempted from arrest in all cases, except treason, felony, or breach of the peace, during their attendance on election, and in going to and returning from them. And provisions are made by law, in several states, to prevent the interference or appearance of the military on the election ground.

4. One of the cardinal principles on the subject of elections is, that the person who receives a majority or plurality of votes is the person elected. Generally a plurality of the votes of the electors present is sufficient; but in some states a majority of all the votes is required. Each elector has one vote.

5. − 2. Elections by corporations or companies are made by the members, in such a way its their respective constitutions or charters direct. It is usual in these cases to vote a greater or lesser number of votes in proportion as the voter has a greater or less amount of the stock of the company or corporation, if such corporation or company be a pecuniary institution. And the members are frequently permitted to vote by proxy. See 7 John. 287; 9 John. 147; 5 Cowen, 426; 7 Cowen, 153; 8 Cowen, 387; 6 Wend. 509; 1 Wend. 98.

6. − _2. The election of things. 1. In contracts, when a; debtor is obliged, in an alternative obligation, to do one of two things, as to pay one hundred dollars or deliver one hundred bushels of wheat, he has the choice to do the one or the other, until the time of payment; he has not the choice, however, to pay a part in each. Poth. Obl. part 2, c. 3, art. 6, No. 247; ll John. 59. Or, if a man sell or agree to deliver one of two articles, as a horse or an ox, he has the election till the time of delivery; it being a rule that "in case an election be given of two several things, always be, which is the first agent, and which ought to do the first act, shall have the election." Co. Litt. 145, a; 7 John. 465; 2 Bibb, R. 171. On the failure of the person who has the right to make his election in proper time, the right passes to the opposite party. Co. Litt. 145, a; Viner, Abr. Election, B, C; Poth. Obl. No. 247; Bac. Ab. h. t. B; 1 Desaus. 460; Hopk. R. 337. It is a maxim of law, that an election once made and pleaded, the party is concluded, electio semel facta, et placitum testatum, non patitur regress−um. Co. Litt. 146; 11 John. 241.

7.−2. Courts of equity have adopted the principle, that a person shall not be permitted to claim under any instrument, whether it be a deed or will, without giving full effect to it, in every respect, so far as such person is concerned. This doctrine is called into exercise when a testator gives what does not belong to him, but to some other person, and gives, to that person some estate of his own; by virtue of which gift a condition is implied, either that he shall part with his own estate or shall not take the bounty. 9 Ves. 515; 10 Ves. 609; 13 Ves. 220. In such a case, equity will not allow the first legatee to, insist upon that by which he would deprive another legatee under the same will of the benefit to which he would be entitled, if the first legatee permited the whole will to operate,

and therefore compels him to make his election between his right independent of the will, and the benefit under it. This principle of equity does not give the disappointed legatee the right to detain the thing itself, but gives a right to compensation out of something else. 2 Rop. Leg. 378, c. 23, s. 1. In order to impose upon a party, claiming under a will, the obligation of making an election, the intention of the testator must be expressed, or clearly implied in the will itself, in two respects; first, to dispose of that which is not his own; and, secondly, that the person taking the benefit under the will should, take under the condition of giving effect thereto. 6 Dow. P. C. 179; 13 Ves. 174; 15 Ves. 390; 1 Bro. C. C. 492; 3 Bro. C. C. 255; 3 P. Wms. 315; 1 Ves. jr. 172, 335; S. C. 2 Ves. jr. 367, 371; 3 Ves. jr. 65; Amb. 433; 3 Bro. P. C. by Toml. 277; 1 B. & Beat. 1; 1 McClel. R. 424, 489, 541. See, generally, on this doctrine, Roper's Legacies, c. 23; and the learned notes of Mr. Swanston to the case Dillon v. Parker, 1 Swanst. R. 394, 408; Com. Dig. Appendix, tit. Election; 3 Desaus. R. 504; 8 Leigh, R. 389; Jacob, R. 505; 1 Clark & Fin. 303; 1 Sim. R. 105; 13 Price, R. 607; 1 McClel. R. 439; 1 Y. & C. 66; 2 Story, Eq. Jur. _1075 to 1135; Domat, Lois Civ. liv. 4, tit. 2, _3, art. 3, 4, 5; Poth. Pand. lib. 30, t. 1, n. 125; Inst. 2, 20, 4; Dig. 30, 1, 89, 7.

8. There are many other cases where a party may be compelled to make an election, which it does not fall within the plan of this work to consider. The reader will easily inform himself by examining the works above referred to.

9. − 3. The law frequently gives several forms of action to the injured party, to enable him to recover his rights. To make a proper election of the proper remedy is of great importance. To enable the practitioner to make the best election, Mr. Chitty, in his valuable Treatise on Pleadings, p. 207, et seq., has very ably examined the subject, and given rules for forming a correct judgment; as his work is in the hands of every member of the profession, a reference to it here is all that is deemed necessary to say on this subject. See also, Hammond on Parties to Actions; Brown's Practical Treatise on Actions at Law, in the 45th vol. of the Law Library; U. S. Dig. Actions IV.

ELECTION OF ACTIONS, practice. It is frequently at the choice of the plaintiff what kind of an action to bring; a skilful practitioner would naturally select that in which his client can most easily prove what is his interest in the matter affected; may recover all his several demands against the defendant; may preclude the defendant from availing himself of a defence, which be might otherwise establish; may most easily introduce his own evidence; may not be embarrassed by making too. many or too few persons parties to the suit; may try it in the county most convenient to himself; may demand bail where it is for the plaintiff's interest; may obtain a judgment with the least expense and delay; may entitle himself to costs; and may demand bail in error. 1 Chit. Pl. 207 to 214.

2. It may be laid down as a general rule, that when a statute prescribes a new remedy, the plaintiff has his election either to adopt such remedy, or proceed at common law. Such statutory remedy is cumulative, unless the statute expressly, or by necessary implication takes away the Common law remedy. 1 S. & R. 32; 6 S. & R. 20; 5 John. 175; 10 John. 389; 16 John. 220; 1 Call, 243; 2 Greenl. 404; 5 Greenl. 38; 6 Harr. & John. 383; 4 Halst. 384; 3 Chit. Pr. 130.

ELECTION OF A DEVISE OR LEGACY. It is an admitted principle, that a person shall not be permitted to claim under any instrument, whether it be a deed or a will, without giving full effect to it in every respect, so far as such person is concerned. When a testator, therefore, gives what belongs to another and not to him, and gives to the owner some estate of his own; this gift is under an implied condition, either that he shall part with his own estate, or not take the bounty. 9 Ves. 615; 10 Ves. 609; 13 Ves. 220; 2 Ves. 697; 1 Suppl. to Ves. jr. 222; Id. 55; Id. 340. If, for example, a testator undertakes to dispose of an estate belonging to B, and devise to B other lands, or bequeath to him a legacy by the same will, B will not be permitted to keep his own estate, and enjoy at the same time the benefit of the devise or bequest made in his favor, but must elect whether he will part with his own estate, and accept the provisions in the will, or continue in possession of the former and reject the latter. See 2 Vern. 5.81; Forr. 176; 1 Swanst. 436, 447 1 Rro. C. C. 480; 2 Rawle, 168; 17 S. & R. 16 2 Gill, R. 182, 201; 1 Dev. Eq. R. 283; 3 Desaus. 346; 6 John. Ch. R. 33; Riley, Ch. R. 205; 1 Whart. 490; 5 Dana, 345; White's L. C. in Eq. *233.

2. The foundation of the equitable doctrine of election, is the intention, explicit or presumed, of the author of the instrument to which it is applied, and such is the, import of the expression by which it is described as proceeding, sometimes on a tacit, implied, or constructive condition, sometimes on equity. See Cas. temp. Talb. 183; 2 Vern. 582; 2 Ves. 14; 1 Eden, R. 536; 1 Ves. 306. See, generally, 1 Swan. 380 to 408, 414, 425, 432, several very full notes.

3. As to what acts of acceptance or acquiescence will constitute an implied election, see 1 Swan. R. 381, n. a; and the cases there cited.

ELECTOR, government. One who has the right to make choice of public officers one, who has a right to vote.

2. The qualifications of electors are generally the same as those required in the person to be elected; to this, however, there is one exception; a naturalized citizen may be an elector of president of the United States, although he could not constitutionally be elected to that office.

ELECTORS OF PRESIDENT. Persons elected by the people, whose sole duty is to elect a president and vice−president of the U. S.

2. The Constitution provides, Am. art. 12, that "the electors shall meet in their respective states, and vote by ballot for president and vice−president, one of whom at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice−president; and they shall make distinct lists of all persons voted fur as president, and of all persons voted for as vice−president, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and the house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of, votes for president, shall be the president, if such number be the majority of the whole number of electors appointed; and if no, person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum, for this purpose, shall consist of a member or members from two−thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice−president shall act as president, as in the case of the death or other constitutional disability of the president.

3. − 2. "The person having the greatest number of votes as vice−president shall be vice−president, if such number be a majority of the whole number of electors appointed and if no person have a majority, them from the two highest numbers on the list, the senate shall choose the vice−president; a quorum for the purpose shall consist of two−thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice−president of the United States." Vide 3 Story, Const. _1448 to 1470.

ELEEMOSYNARY. Charitable alms−giving.

2. Eleemosynary corporations are colleges, schools, and hospitals. 1 Wood. Lect. 474; Skinn. 447 1 Lord Raym. 5 2 T. R. 346.

ELEGIT, Eng. practice, remedies. A writ of execution directed to the sheriff, commanding him to make delivery of a moiety of the party’s land, and all his goods, beasts of the plough only excepted.

2. The sheriff, on the receipt of the writ, holds an inquest to ascertain the value of the lands and goods he has seized, and then they are delivered to the plaintiff, who retains them until the whole debt and damages have been paid and satisfied; during that term he is called tenant by elegit. Co. Litt. 289. Vide Pow. Mortg. Index, h. t.; Wats. Sher. 206. As to the law of the several states on the subject. of seizing land and extending it. see 1 Hill. Ab. 556−6.

ELIGIBILITY. Capacity to be elected.

2. Citizens are in general eligible to all offices; the exceptions arise from the want of those qualifications which the constitution requires; these are such as regard his person, his property, or relations to the state.

3.− 1. In. general, no person is eligible to any office, until he has attained the full age of twenty−one years; no one can be elected a senator of the United States, who shall not have attained the age of thirty years, been a ’citizen of th e United States nine years and who shall not be an inhabitant of the, state for which he shall be chosen. Const. art. 1, s. 3. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, is eligible to the office of president, and no person shall 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. Const. art. 2, s. 1.

4. − 2. A citizen may be ineligible in consequence of his relations to the state; for example, holding an office incompatible with the office sought. Vide Ineligibility. Because he has not paid the taxes the law requires; because he has not resided a sufficient length of time in the state.

5. − 3. He may be ineligible for want of certain property qualifications required by some, law.

ELISORS, practice. Two persons appointed by the court to return a jury, when the sheriff and the coroner have been challenged as incompetent; in this case the elisors return the writ of venire directed to them, with a panel of the juror's names, and their return is final, no challenge being allowed to their array. 3 Bl. Com. 355,; 3 Cowen, 296; 1 Cowen, 32.

ELL. A measure of length. In old English the word signifies arm, which sense it still retains in the word elbow. Nature has no standard of measure. The cubit, the ell, the span, palm, hand, finger, (being taken from the individual who uses them) varies. So of the foot, pace, mile, or mille passuum. See Report on Weights and Measures, by the Secretary of State of the United. States, Feb. 22, 1821; Fathom.

ELOIGNE, practice. This word signifies, literally, to remove to a distance; to remove afar off. It is used as a return to a writ of replevin, when the chattels have been removed out of the way of the sheriff. Vide Elongata.

ELONGATA, practice. There turn made by the sheriff to a writ of replevin, when the goods have been removed to places unknown to him. See, for the form of this return, Wats. Sher. Appx. c. 18, .s. 3, p. 454; 3 Bl. Com. 148.

2. On this return the plaintiff is entitled to a capias in withernam. Vide Withernam, and Wats. Sher. 300, 301. The word eloigne, (q. v.) is sometimes used as synonymous with elongata.

ELOPEMENT. This term is used to denote the departure of a married woman from her hushand, and dwelling with an adulterer.

2. While the wife reides with her hushand, and cohabits with him, however exceptionable her conduct may be, yet he is bound to provide her with necessaries, and to pay for them; but when she elopes, the hushand is no longer liable for her alimony, and is not bound to pay debts of her contracting when the separation is notorious; and whoever gives her credit under these circumstances, does so at his peril. Chit. Contr. 49; 4 Esp. R. 42; 3 Pick. R. 289; 1 Str. R. 647, 706; 6 T. R. 603; 11 John. R. 281; 12 John. R. 293; Bull. N. P. 135; Stark. Ev. part 4, p. 699.

ELOQUENCE OR ORATORY. The act or art of speaking well upon any subject with a view to persuade. It comprehends a good elocution, correct and appropriate expressions uttered. with fluency, animation and suitable action. The principal rules of the art, which must be sought for in other works, are summarily expressed in the following lines:

" Be brief, be pointed; let your matter stand
Lucid in order, solid, and at hand;
Spend not your words on trifles, but condense;
Strike with the mass of thoughts, not drops of sense;
Press to the close with vigor once begun,
And leave, (how hard the task!) leave off when done;
Who draws a labor'd length of reasoning out,
Put straws in lines for winds to whirl about;
Who draws a tedious tale of learning o'er,
Counts but the sands on ocean's boundless shore;
Victory in law is gain'd as battle's fought,
Not by the numbers, but the forces brought;
What boots success in skirmishes or in fray,
If rout and ruin following close the day?
What worth a hundred Posts maintained with skill,
If these all held, the foe is victor still?
He who would win his cause, with power must frame
Points of support, and look with steady aim:
Attack the weak, defend the strong with art,
Strike but few blows, but strike them to the heart;
All scatter'd fires but end in smoke and noise,
The scorn of men, the idle play of boys.
Keep, then, this first great precept ever near,
Short be your speech, your matter strong and clear,
Earnest your manner, warm and rich your style,
Severe in taste, yet full of grace the while;

So may you reach the loftiest heights of fame,
And leave, when life is past, a deathless name."

ELSEWHERE. In another place.

2. Where one devises all his land in A, B and C, three distinct towns, and elsewhere, and had lands of much greater value than those in A, B and C, in another county, the lands in the other county were decreed to pass by the word elsewhere; and by Lord Chancellor King, assisted by Raymond, Ch. J., and other judges, the word elsewhere, was adjudged to be the same as if the testator had said he devised all his lands in the three towns particularly mentioned, or in any other place whatever. 3 P. Wms. 5 6. See also Prec. Chan. 202; 2 Vern. 461; 2 Vern. 560; 3 Atk. 492; Cowp. 860; Id. 808; 2 Barr. 912; 5 Bro. P. C. 496; S. C. 1 East, 456; 1 Vern. 4 n.

3. − 2. As to the effect of the word elsewhere, in the case of lands not purchased at the time of making the will, see 3 Atk. 254; 2 Vent. 351. Vide Alibi.

EMANCIPATION. An act by which a person, who was once in the power of another, is rendered free. B y the laws of Louisiana, minors may be emancipated. Emancipation is express or implied.

2. Express emancipation. The minor may be emancipated by his father, or, if be has no father, by his mother, under certain restrictions. This emancipation takes place by the declaration, to that effect, of the father or mother, before a notary public, in the presence of two witnesses. The orphan minor may, likewise, be emancipated by the judge, but not before he has arrived at the full age of eighteen years, if the family meeting, called to that effect, be of opinion that he is able to administer his property. The minor may be emancipated against the will of his father and mother, when they ill treat him excessively, refuse him support, or give him corrupt example.

3. The marriage of the minor is an implied emancipation.

4. The minor who is emancipated has the full administration of his estate, and may pass all act’s which may be confined to such administration; grant leases, receive his revenues and moneys which may be due him, and give receipts for the same. He cannot bind himself legally, by promise or obligation, for any sum exceeding the amount of one year of his revenue. When he is engaged in trade, he is considered as leaving arrived to the age of majority, for all acts which have any relation to such trade.

5. The emancipation, whatever be the manner in. which it may have been effected, may be revoked, whenever the minor contracts engagements which exceed the limits prescribed by law.

6. By the English law, filial emancipation is recognized, chiefly, in relation to the parochial settlement of paupers. See 3 T. R. 355; 6 T. R. 247; 8 T. R. 479; 2 East, 276; 10 East, 88.; 11 Verm. R. 258, 477. See Manumission. See Coop. Justin. 441, 480; 2 Dall. Rep. 57, 58; Civil Code of Louisiana, B. 1, tit. 8, c. 3; Code Civ. B. 1, tit. 10, c. 2; Diet. de Droit, par Ferriere; Diet. de Jurisp. art. Emancipation.

EMBARGO, maritime law. A proclamation, or order of state, usually issued in time of war, or threatened hostilities, prohibiting the departure of ships or goods from some, or all the ports of such state, until further order. 2 Wheat. 148.

2. The detention of ships by an embargo is such an injury to the owner as to entitle him to recover on a policy of insurance against "arrests or detainments." And whether the embargo be legally or illegally laid, the injury to the owner is the same; and the insurer is equally liable for the loss occasioned by it. Marsh. Ins. B. 1, c. 12, s. 5; 1 Kent, Com. 60 1 Bell’s Com. 517, 5th ed.

3. An embargo detaining a vessel at the port of departure, or in the course of the voyage, does not, of itself, work a dissolution of a charter party, or the contract with the seamen. It is only a temporary restraint imposed by authority for legitimate political purposes, which suspends, for a time, the performance of such contracts, and leaves the rights of parties untouched, 1 Bell’s Com. 517; 8 T. R. 259; 5 Johns. R. 308; 7 Mass. R. 325 , 3 B. & P. 405−434; 4 East, R. 546−566.

EMBEZZLEMENT, crim. law. The fraudulently removing and secreting of personal property, with which the party has been entrusted, for the purpose of applying it to his own use.

2. The Act of April 30, 1790, s. 16, 1 Story, L. U. S. 86, provides, that if any person, within any of the laces under the sole and exclusive jurisdiction of the United States, or upon the high seas, shall take and carry away, with an intent to steal or purloin, the personal goods of another; or if any person or persons, having, at any time hereafter, the charge or custody of any arms, ordnance, munition, shot, powder, or habiliments of war, belonging to the. United States, or of any victuals provided for the victualling of any soldiers, gunners, marines, or pioneers,

shall, for any lucre or gain, or wittingly, advisedly, and of purpose to hinder or impede the service of the United States, embezzle, purloin, or convey away, any of the said arms, ordnance, munition, shot or powder, habiliments of war, or victuals, that then, and in every of the cases aforesaid, the persons so offending, their counsellors, aiders and abettors, (knowing of, and privy to the offences aforesaid,) shall, on conviction, be fined, not exceeding the fourfold value of the property so stolen, embezzled or purloined the one moiety to be paid to the owner of the goods, or the United States, as the case may be, and the other moiety to the informer and prosecutor, and be publicly whipped, not exceeding thirty−nine stripes.

3. The Act of April 20, 1818, 3 Story, 1715, directs that wines and distilled spirits shall, in certain cases, be deposited in the public warehouses of the United States, and then it is enacted, s. 5, that if any wines, or other spirits, deposited under the provisions of this act, shall be embezzled, or fraudulently hid or removed, from any store or place wherein they shall have been deposited, they shall be forfeited, and the person or persons so embezzling, hiding, or removing the same, or aiding or assisting therein, shall be liable to the same pains and penalties as if such wines or spirits had been fraudulently unshipped or landed without payment of duty.

4. By the 21st section of the act to reduce into one the several acts establishing and regulating the post−office, passed March 3, 1825, 3 Story, 1991, the offence of embezzling letters is punished with fine and imprisonment. Vide Letter.

5. The act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes, passed March 3, 1825, s. 24, 3 Story, 2006, enacts, that if any of the gold or silver coins which shall be struck or coined at the mint of the United States, shall be debased, or made worse, as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be, pursuant to the several acts relative thereto, through the default or with the connivance of any of the officers or persons who shall be employed at the said mint, for the purpose of profit or gain, or otherwise, with a fraudulent intent and if any of the said officers or persons shall embezzle any of the metals which shall, at any time, be committed to their charge for the purpose of being coined; or any of the coins which shall be struck or coined, at the said mint; every such officer, or person who shall commit any, or either, of the said offences, shall be deemed guilty of felony, and shall be sentenced to imprisonment and hard labor for a term not less than one year, nor more than ten years, and shall be fined in a sum not exceeding ten thousand dollars.

6. When an embezzlement of a part of the cargo takes place on board of a ship, either from the fault, fraud, connivance or negligence of any of the crow, they are bound to contribute to the reparation of the loss, in proportion to their wages. When the embezzlement is fixed on any individual, he is solely responsible; when it is made by the crew, or some of the crew, but the particular offender is unknown, and from the circumstances of the case, strong presumptions of guilt apply to the whole crew, all must contribute. The presumption of innocence is always in favor of the crew, and the guilt of the parties must be established, beyond all reasonable doubt, before they can be required to contribute. 1 Mason’s R. 104; 4 B. & P. 347; 3 Johns. Rep. 17; 1 Marsh. Ins. 241; Dane’s Ab. Index, h. t.; Wesk. Ins. 194; 3 Kent, Com., 151; Hardin, 529.

EMBLEMENTS, rights. By this term is understood the crops growing upon the land. By crops is here meant the products of the earth which grow yearly and are raised by annual expense and labor, or "great manurance and industry," such as grain; but not fruits which grow on trees which are not to be planted yearly, or grass, and the like, though they are annual. Co. Litt. 55, b; Com. Dig. Biens, G; Ham. Part. 183, 184.

2. It is a general rule, that when the estate is terminated by the act of God in any other way than by the death of the tenant for life, or by act of the law, the tenant is entitled to the enablements; and when he dies before harvest time, his executors shall have the emblements, as a return for the labor and expense of the deceased in tilling the ground. 9 Johns. R. 112; 1 Chit. P. 91: 8 Vin. Ab. 364 Woodf. L. & T. 237 Toll. Ex. book 2, c. 4; Bac. Ab Executors, H 3; Co. Litt. 55; Com. Dig. Biens G.; Dane’s Ab. Index, h. t.; 1 Penna. R. 471; 3 Penna. 496; Ang. Wat. Co. 1 Bouv. Inst. Index, h. t.

EMBRACEOR, criminal law. He who, when a matter is on trial between party and party, comes to the bar with one of the parties, and having received some reward so to do, speaks in the case or privily labors the jury, or stands there to survey or overlook them, thereby to put them in fear and doubt of the matter. But persons learned in the law may speak in a case for their clients. Co. Litt. 369; Terms de la Ley. A person who is guilty of embracery. (q. v.)

EMBRACERY, crim. law. An attempt to corrupt or influence a jury, or any way incline them to be more favorable to the one side than to the other, by money, promises, threats, or persuasions; whether the juror on

whom such attempt is made give any verdict or not, or whether the Verdict be true or false. Hawk. 259; Bac. Ab. Juries, M 3; Co. Litt. 157, b, 369, a; Hob. 294; Dy. 84, a, pl. 19; Noy, 102; 1 Str. 643; 11 Mod. 111, 118; Com. 601; 5 Cowen, 503.

EMENDALS, Eng. law. This ancient word is said to be used in the accounts of the inner temple, where so much in emendals at the foot of an account signifies so much in bank, in stock, for the supply of emergencies. Cunn. Law Dict.

EMIGRANT. One who quits his country for any lawful reason, with a design to settle elsewhere, and who takes his family and property, if he has any, with him. Vatt. b. 1, c. 19, _224.

EMIGRATION. The act of removing from one place to another. It is sometimes used in the same sense as expatriation, (q. v.) but there is some difference in the signification. Expatriation is the act of abandoning one's country, while emigration is, perhaps not strictly, applied to the act of removing from one part of the country to another. Vide 2 Kent, Com. 36.

EMINENCE; A title of honor given to cardinals.

EMINENT DOMAIN. The right which people or government retain over the estates of individuals, to resume the same for public use.

2. It belongs to the legislature to decide what improvements are of sufficient importance to justify the exercise of the right of eminent domain. See 2 Hill. Ab. 568 1 U. S. Dig. 560; 1 Am. Eq. Dig. 312 3 Toull. n. 30 p. 23; Ersk. hist. B. 2) tit. 1, s. 2; Grotius, h. t. See Dominium.

EMISSARY. One who is sent from one power or government into another nation for the purpose of spreading false rumors and to cause alarm. He differs from a spy. (q. v.)

EMISSION, med. jur. The act by which any matter whatever is thrown from the body; thus it is usual to say, emission of urine, emission of semen, &c.

2. In cases of rape, when the fact of penetration is proved, it may be left to the jury whether emission did or did not take place. Proof of emission would perhaps be held to be evidence of penetration. Addis. R. 143; 2 So. Car. Const. R. 351; 2 Chitty, Crim. Law, 810; 1 Beck's Med. Jur. 140 1 Russ. C. & M. 560; 1 East, P. C. 437.

TO EMIT. To put out; to send forth,

2. The tenth section of the first article of the constitution, contains various prohibitions, among which is the following: No state shall emit bills of credit. To emit bills of credit is to issue paper intended to circulate through the−community for its ordinary purposes, as money, which paper is redeemable at a future day. 4 Pet. R. 410, 432; Story on Const. _1358. Vide Bills of credit.

EMMENAGOGUES, med. jur. The name of a class of medicines which are believed to have the power. of favoring the discharge of the menses. These are black hellebore, savine, (vide Juneperius Sabina,) madder, mercury, polygala, senega, and pennyroyal. They are sometimes used for the criminal purpose of producing abortion. (q. v.) They always endanger the life of the woman. 1 Beck's Medical Jur. 316; Dungl. Med. Diet. h. t.; Parr's Med. Dict. h. t.; 3 Paris and Fonbl. Aled. Jur. 88.

EMOLUMENT. The lawful gain or profit which arises from an office.

EMPALEMENT. A punishment in which a sharp polo was forced up the fundament. Encyc. Lond. h. t.

TO ENPANEL, practice. To make a list or roll, by the sheriff or other authorized officer, of the names of jurors who are summoned to appear for the performance of such service as jurors are required to perform.

EMPEROR, an officer. This word is synonymous with the Latin imperator; they are both derived from the. verb imperare. Literally, it signifies he who commands.

2. Under the Roman republic, the title emperor was the generic name given to the commanders−in−chief in the armies. But even then the application of the word was restrained to the successful commander, who was declared emperor by the acclamations of the army, and was afterwards honored with the title by a decree of the senate. 3. It, is now used to designate some sovereign prince who bears this title. Ayl. Pand. tit. 23.

EMPHYTEOSIS, civil law. The name of a contract by which the owner of an uncultivated piece of land granted it to another either in perpetuity, or for a long time, on condition that he should: improve it, by building, planting or cultivating it, and should pay for it an annual rent; with a right to the grantee to alienate it, or transmit it by descent to his heirs, and under a condition that the grantor should never re−enter as long as the rent should be paid to him by the grantee or his assigns. Inst. 3, 25, 3. 18 Toull. n. 144.

2. This has a striking resemblance to a ground−tent. (q. v.). See Nouveau Denisart, mot, Emphyteose; Merl. Reper. mot Emphyteose; Faber, De jure emphyt. Definit. 36; Code, 4, 66, 1.

EMPIRE. This word signifies, first, authority or command; it is the power to command or govern those actions of men which would otherwise be free; secondly, the country under the government of an emperor but sometimes it is used to designate a country subject to kingly power, as the British empire. Wolff, Inst. _833.

EMPLOYED. One who is in the service of another. Such a person is entitled to rights and liable to. perform certain duties.

2. He is entitled to a just compensation for his services; when there has been a special contract, to what has been agreed upon; when not, to such just recompense as he deserves.

3. He is bound to perform the services for which he has engaged himself; and for a violation of his engagement he may be sued, but he is not liable to corporal correction. An exception to this rule may be mentioned; on the ground of necessity, a sailor may be punished by reasonable correction, when it is necessary for the safety of the vessel, and to maintain discipline. 1 Bouv. Inst. n. 1001: 2 Id. n. 2296.

EMPLOYEE. One who is authorized to act for another; a mandatory.

EMPLOYMENT. An employment is an office; as, the secretary of the treasury has a laborious and responsible employment; an agency, as, the employment of an auctioneer; it signifies also the act by which one is engaged to do something. 2 Mart. N. S. 672; 2 Harr. Cond. Lo. R. 778.

2. The employment of a printer to publish the laws of the United States, is not an office. 17 S. & R. 219, 223. See Appointment.

EMPLOYER. One who has engaged or hired the services of another. He is entitled to rights and bound to perform duties.

2. − 1. His rights are, to be served according to the terms of the contract. 2. He has a right against third persons for an injury to the person employed, or for harboring him, so as to deprive the employer of his services. 2 Bouv. Inst. n. 2295.

3. His duties are to pay the workman the compensation agreed upon, or if there be no special agreement, such just recompense as he deserves. Vide Hire; Hirer.

EMPTION. The act of buying.

EMPTOR. A buyer; a purchaser.

EN DEMEURE. In default. This term is used in Louisiana. 3 N. S. 574. See Moral in.

ENABLING POWERS. A term used in equity. When the donor of a power, who is the owner of the estate, confers upon persons not seised of the fee, the right of creating interests to take effect out of it, which could not be done by the donee of the power, unless by such authority; this is called an enabling power. 2 Bouv. Inst. n. 1928.

TO ENACT. To establish by law; to perform or effect; to decree. The usual formula in making laws is, Be it enacted.

ENCEINTE, med. jur. A French word, which signifies pregnant.

2. When a woman is pregnant, and is convicted of a capital crime, she cannot lawfully be punished till after her delivery.

3. in the English law, where a widow is suspected to feign herself with child, in order to produce a supposititious heir to the estate, the presumptive heir may have a writ de ventre inspiciendo, to examine whether she be with child or not. Cro. Eliz. 566; 4 Bro. C. C. 90. As to the signs of pregnancy, see 1 Beck's Med. Jur. 157. See, generally, 4 Bl. Com. 894; 2 P. Wms. 591; 1 Cox, C. C. 297 and Pregnancy; Privement enceinte.

ENCLOSURE. An artificial fence put around one's estate. Vide Close.

ENCROACHMENT. An unlawful gaining upon the right or possession of another; as, when a man sets his fence beyond his line; in this case the proper remedy for the party injured is an action of ejectment, or an action of trespass.

ENCUMBRANCE. A burden or charge upon an estate or property, so that it cannot be disposed of without being subject to it. A mortgage, a lien for taxes, are examples of encumbrances.

2. These do not affect the possession of the grantee, and may be removed or extinguished by a definite pecuniary value. See 2 Greenl. R. 22; 5 Greenl. R. 94.

3. There are encumbrances of another kind which cannot be so removed, such as easements for example, a highway, or a preexisting right to take water from, the land. Strictly speaking, however, these are not encumbrances, but appurtenances to estates in other lands, or in the language of the civil law, servitudes. (q. v.) 5 Conn. R. 497; 10 Conn. R. 422 15 John. R. 483; and see 8 Pick. R. 349; 2 Wheat. R. 45. See 15 Verm. R. 683; l Metc. 480; 9 Metc. 462; 1 App. R. 313; 4 Ala. 21; 4 Humph. 99; 18 Pick. 403; 1 Ala. 645; 22 Pick. 447; 11 Gill &

John. 472.

ENDEAVOR, crim. law. An attempt. (q. v.) Vide Revolt.

ENDORSEMENT. Vide Indorsement.

ENDOWMENT. The bestowing or assuring of a dower to a woman. It is sometimes used: metaphorically, for the setting a provision for a charitable institution, as the endowment of a hospital.

ENEMY, international law. By this term is understood the whole body of a nation at war with another. It also signifies a citizen or subject of such a nation, as when we say an alien enemy. In a still more extended sense, the word includes any of the subjects or citizens of a state in amity with the United States, who, have commenced, or have made preparations for commencing hostilities against the United States; and also the citizens or subjects of a state in amity with the United States, who are in the service of a state at war with them. Salk. 635; Bac. Ab. Treason, G.

2. An enemy cannot, as a general rule, enter into any contract which can be enforeed in the courts of law; but the rule is not without exceptions; as, for example, when a state permits expressly its own citizens to trade with the enemy; and perhaps a contract for necessaries, or for money to enable the individual to get home, might be enforced. 7 Pet. R . 586.

3. An alien enemy cannot, in general, sue during the war, a citizen of the United States, either in the courts of, the United States, or those of the several states. 1 Kent, Com. 68; 15 John. R. 57 S. C. 16 John. R. 438. Vide Marsh. Ins. c. 2, s. 1; Park. Ins. Index. h. t.; Wesk. Ins. 197; Phil. Ins. Index. h. t.; Chit. Comm. Law, Index, h. t.; Chit. Law of Nations, Index, h. t.

4. By the term enemy is also understood, a person who is desirous of doing injury to another. The Latins had two terms to signify these two classes of persons; the first , or the public enemy, they called hostis, and the latter, or the private enemy, inimicus.

TO ENFEOFF. To make a gift of any corporeal hereditaments to another. Vide Feoffment.

TO ENFRANCHISE. To make free to incorporate a man in a society or body politic. Cunn. L. D. h. t. Vide Disfranchise.

ENGAGEMENT. This word is frequently used in the French law to signify not only a contract, but the obligations arising from a quasi contract. The terms obligations (q. v.) and engagements, are said to be synonymous 17 Toull. n. 1; but the Code seems specially to apply the term engagement to those obligations which the law, imposes on a man without the intervention of any contract, either on the part of the obligor or the obligee. Art. 1370.

ENGLESHIRE. A law was made by Canutus, for the preservation of his Danes, that when a man was killed, the hundred or town should be liable to be amerced, unless it could be proved that the person killed was an Englishman. This proof was called Engleshire. It consisted, generally, of the testimony of two males on the part of the father of him that had been killed, and two females on the part of his mother. Hal. Hist. P . C. 447; 4 Bl. Com. 195; Spelman, Gloss. See Francigena .

TO ENGROSS, practice, conveyancing. To copy the rude draught of an instrument in a fair and large hand. See 3 Bouv. Inst. n, 2421, note.

ENGROSSER. One who purchases large quantities of any commodities in order to have the command of the market, and to sell them again at high prices.

TO ENJOIN. To command; to require; as, private individuals are not only permitted, but enjoined by law to arrest an offender when present at the time a felony is committed or dangerous wound given, on pain of fine and imprisonment if the wrong doer escape through their negligence. 1 Hale, 587; 1 East, P. C. 298,304; Hawk. B. 2, c. 12, s. 13; R. & M. C. C. 93. 2. In a more technical sense, to enjoin, is to command or order a defendant in equity to do or not to do a particular thing by writ of injunction. Vide Injunction.

TO ENLARGE. To extend; as, to enlarge a rule to plead, is to extend the time during which a defendant may plead. To enlarge, means also to set at liberty; as, the prisoner was enlarged on giving bail.

ENLARGING. Extending or making more comprehensive; as an enlarging statute, which is one extending the common law.

ENTIA PARS. The part of the eldest. Co. Litt. 166; Bac. Ab. Coparceners, C. 2. When partition is voluntarily made among coparceners in England, the eldest has the first choice, or primer election, (q. v.) and the part which she takes is called enitia pars. This right is purely personal, and descends; it is also said that even her as signee shall enjoy it; but this has also been doubted. The word enitia is said to be derived from the old French, eisne the

eldest. Bac. Ab. Coparceners, C; Keilw. 1 a, 49 a; 2 And. 21; Cro. Eliz. 18.

ENJOYMENT. The right which a man possesses of receiving all the product of a thing for his necessity, his use, or his pleasure.

ENLISTMENT. Thc act of making a contract to serve the government in a subordinate capacity, either in the army or navy. The contract so made, is also called an enlistment. See, as to the power of infants to enlist, 4 Binn. 487; .5 Binn. 423; Binn. 255; 1 S. & R. 87; 11 S. & R. 93.

ENORMIA. Wrongful acts. See Alia Enormia.

TO ENROLL. To register; to enter on the rolls of chancery, or other court's; to make a record.

ENROLLMENT, Eng. law. The registering, or entering in the rolls of chancery, king's bench, common pleas, or exchequer, or by the clerk of the peace in the records of the quarter sessions, of any lawful act; as a recognizance, a deed of bargain and sale, and the like. Jacob, L. D.

TO ENTAIL. To create an estate tail. Vide Tail.

ENTIRE. That which is not divided; that which is whole.

2. When a contract is entire, it must in general be fully performed, before the party can claim the compensation which was to have been paid to him; for example, when a man hires to serve another for one year, he will not be entitled to leave him at any time before the end of the year, and claim compensation for the time, unless it be done by the consent or default of the party hiring. 6 Verm. R. 35; 2 Pick. R. 267; 4 Pick. R. 103 10 Pick. R. 209; 4 McCord's R. 26, 246; 4 Greenl. R. 454; 2 Penna. R. 454; 15 John. R. 224; 4 Pick. R. 114; 9 Pick. R. 298 19 John. R. 337; 4 McCord, 249; 6 Harr. & John. 38. See Divisible.

ENTIRETY, or, ENTIERTIE. This word denotes the whole, in contradistinction to moiety, which denotes the half part. A hushand and wife, when jointly seized of land, are seized by entierties and not "pur mie" as joint tenants are. Jacob's Law Dict.; 4 Kent, 362; 2 Kent, 132; Hartv. Johnson, 3 Penna. Law Journ. 350, 357.

ENTREPOT. A warehouse; a magazine where goods are deposited, and which are again to be removed.

ENTRY. criminal law. The unlawful breaking into a house, in order to commit a crime. In cases of burglary, the least entry with the whole or any part of the body, hand, or foot, or with any instrument or weapon, introduced for the purpose of committing a felony, is sufficient to complete the offence. 3 Inst. 64.

ENTRY, estates, rights. The taking possession of lands by the legal owner. 2. A person having a right of possession may assert it by a peaceable entry, and being in possession may retain it, and plead that it is his soil and freehold; and this will not break in upon any rule of law respecting the mode of obtaining the possession of lands. 3 Term Rep. B. R. 295. When another person has taken possession of lands or tenements, and the owner peaceably makes an entry thereon, and declares that be thereby takes possession of the same, he shall, by this notorious act of ownership, which is equal to a feodal investiture, be restored to his original right. 3 Bl. Com. 174. 3. A right of entry is not assignable at common law. Co. Litt. 214 a. As to the law on this subject in the United States, vide Buying of titles; 4 Kent, Com. 439 2 Hill. Ab. c. 33, _42 to 52; also, article ReEntry; Bac. Ab. Descent, G; 8 Vin. Ab. 441.

4. In another sense, entry signifies the going upon another man's lands or his tenements. An entry in this sense may be justifiably made on another's land or house, first, when the law confers an authority; and secondly, when the party has authority in fact.

5. First, 1. An officer may enter the close of one against whose person or property he is charged with the execution of a writ. In a civil case, the officer cannot open (even by unlatching) the outer inlet to a house, as a door or window opening into the street 18 Edw. IV., Easter, 19, pl. 4; Moore, pl. 917, p. 668 Cooke's case, Wm. Jones, 429; although it has been closed for the purpose of excluding him. Cowp. 1. But in a criminal case, a constable may break open an outer door to arrest one within suspected of felony. 13 Edw. IV., Easter, 4, p. 9. If the outer door or window be open, he may enter through it to execute a civil writ; Palin. 52; 5 Rep. 91; and, having entered, he may, in every case, if necessary, break open an inner door. 1 Brownl. 50.

6. − 2. The lord may enter to distrain, and go into the house for that purpose, the outer door being open. 5 Rep. 91.

7. − 3. The proprietors of goods or chattels may enter the land of another upon which they are placed, and remove them, provided they are there without his default; as where his tree has blown down into the adjoining close by the wind, or his fruit has fallen from a branch which overhung it. 20 Vin. Abr. 418.

8. − 4. If one man is bound to repair bridge, he has a right of entry given him by law for that purpose. Moore, 889.

9. − 5. A creditor has a right to enter the close of his debtor to demand the duty owing, though it is not to be rendered there. Cro. Eliz. 876.

10. − 6. If trees are excepted out of a demise, the lessor has the right of entering, to prune or fell them. Cro. Eliz. 17; 11. Rep. 53.

11. − 7. Every traveller has, by law, the privilege of entering a common inn, at all seasonable times, provided the host has sufficient accommodation, which, if he has not, it is for him to declare.

12.− 8. Ever man may throw down a public nuisance, and a private one may be thrown down by the party grieved, and this before an prejudice happens, but only from the probability that it may happen. 5 Rep, 102 and see 1 Brownl. 212; 12 Mod. 510 Wm. Jones, 221; 1 Str. 683. To this end, the abator has authority to enter the close in which it stands. See Nuisance.

13. − 9. An entry may be made on the land of another, to exercise or enjoy therein an incorporeal right or hereditament to which he is entitled. Hamm. N. P. 172. See general Bouv. Inst. Index, h. t.; 2 Greenl. Ev. _627; License.

ENTRY, commercial law. The act of setting down the particulars of a sale, or other transaction, in a merchant's or tradesman's accouut books; such entries are, in general, prima facie evidence of the sale and delivery, and of work, done; but unless the entry be the original one, it is not evidence. Vide Original entry.

ENTRY AD COMMUNE LEGEM, Eng. law. The name of a writ which lies in favor of the reversioner, when the tenant for term of life, tenant for term of another's life, tenant by the curtesy, or tenant in dower, aliens and dies. T. L.

ENTRY OF GOODS, commercial law. An entry of goods at the custom−house is the submitting to the officers appointed by law, who have the collection of the customs, goods imported. into the United States, together with a statement or description of such goods, and the original invoices of the same. The act of March 2, 1799, s. 36, 1 Story, L. U. S. 606, and the act of March 1, 1823, 3 Story, L. U. S. 1881, regulate the manner of making entries of goods.

ENTRY, WRIT OF. The name of a writ issued for the purpose of obtaining possession of land from one who has entered unlawfully, and continues in possession. This is a mere possessor action, and does not decide the right of property.

2. The writs of entry were commonly brought, where the tenant or possessor of the land entered lawfully; that is, without fraud or force; 13 Edw. I. c. 25; although sometimes they wer6 founded upon an entry made by wrong. The forms of these writs are very various, and are adapted to the, title and estate of the demandant. Booth enumerates and particularly discusses twelve varieties. Real Actions, pp. 175−200. In general they contain an averment of the manner in which the defendant entered. At the common law these actions could be brought only in the degrees, but the Statute of Marlbridge, c. 30; Rob. Dig. 147, cited as c. 29; gave a writ adapted to cases beyond the degrees, called a writ of entry in the post. Booth, 172, 173. The denomination of these writs by degrees, is derived from the circumstance that estates are supposed by the law to pass by degrees from one person to another, either by descent or purchase. Similar to this idea, or rather corresponding with it, are the gradations of consanguinity, indicated by the very common term pedigree. But in reference to the writs of entry, the degrees recognized were only two, and the writs were quaintly termed writs in the per, and writs in the per and cui. Examples of these writs are given in Booth on R. A. pp. 173, 174. The writ in the, per runs thus: " Command A, that be render unto B, one messuage, &c., into which he has not entry except (per) by &c. The writ in the per and cui contains another gradation in the transmission of the estate, and read thus: Command A, that he render, &c., one messuage, into which he hath not entry but (per) by C, (cui) to whom the aforesaid B demised it for a term of years, now expired," &c. 2 Institute, 153; Co. Litt. b, 239, a. Booth, however, makes three degrees, by accounting the estate in the per, the second degree. The difference is not substantial. If the estate had passed further, either by descent or conveyance, it was said to be out of the degrees, and to such cases the writ of entry on the. statute of Marlbridge, only, was applicable. 3 Bl. Com. 181, 182; Report of Com. to Revise Civil Code of Penna. January 15, 1835, p. 85. Vide Writ of entry.

TO ENURE. To take, or have effect or serve to the use, benefit, or advantage of a person. The word is often written inure. A release to the tenant for life, enures to him in reversion; that is, it has the same effect for him as for the tenant for life. A discharge of the principal enures to the benefit of the surety.

ENVOY, international law. In diplomatic language, an envoy is a minister of the second rank, on whom his sovereign or government has conferred a degree of dignity and respectability, which, without being on a level with

an ambassador, immediately follows, and among ministers, yields the preeminence to him alone.

2. Envoys are either ordinary or extraordinary; by custom the latter is held in greater consideration. Vattel, liv. 4, c. 6, _72.

EPILEPSY, med. jur. A discase of the brain, which occurs in paroxysms, with uncertain intervals between them.

2. These paroxysms are characterized by the loss of sensation, and convulsive motions of the muscles. When long continued and violent, this disease is very apt to end in dementia. (q. v.) It gradually destroys the memory, and impairs the intellect, and is one of the causes of an unsound mind. 8 Ves. 87. Vide Dig. 50, 16, 123; Id. 21, 1, 4, 5.

EPISCOPACY, eccl. law. A form of government by diocesan bishops; the office or condition of a bishop.

EPISTLES, civil law. The name given to a species of rescript. Epistles were the answers given by the prince, when magistrates submitted to him a question of law. Vicle Rescripts.

EQUALITY. Possessing the same rights, and being liable to the same duties. See 1 Toull. No. l70, 193, Int.

2. Persons are all equal before the law, whatever adventitious advantages some may possess over others. All persons are protected by the law, and obedience to it is required from all.

3. Judges in court, while exercising their functions, are all upon an equality, it being a rule that inter pares non est potestas; a judge cannot, therefore, punish another judge of the same court for using any expression in court, although the words used might have been a contempt in any other person. Bac. Ab., Of the court of sessions, of justices of the peace.

4. In contracts the law presumes the parties act upon a perfect equality; when, therefore, one party uses any fraud or deceit to destroy this equality, the party grieved may avoid the contract. In case of a grant to two or more persons jointly, without designating what each takes, they are presumed to take in equal proportion. 4 Day, 395.

5. It is a maxim, that when the equity of the parties is equal, the law must prevail. 3 Call, R. 259. And that, as between different creditors, equality is equity. 4 Bouv. Inst. n. 3725; 1 Page, R. 181. See Kames on Eq. 75. Vide Deceit; Fraud.

EQUINOX. The name given to two periods of the year when the days and nights are equal; that is, when the space of time between the rising and setting of the sun is one half of a natural day. Dig. 43, 13, 1, 8. Vide Day.

EQUITABLE. That which is in conformity to the natural law. Wolff, Inst. _83.

EQUITABLE ESTATE. An equitable estate is a right or interest in land, which, not having the properties of a legal estate, but being merely a right of which courts of equity will take notice, requires the aid of such court to make it available.

2. These estates consist of uses, trusts, and powers. See 2 Bouv. Inst. n. 1884. Vide Cestui que trust; Cestui que use.

EQUITABLE MORTGAGE, Eng. law. The deposit of title−deeds, by the owner of an estate, with a person from whom he has borrowed money, with an accompanying agreement to execute a regular mortgage, or by the mere deposit, without even any verbal agreement respecting a regular security. 2 Pow. on Mort. 49 to 61; 1 Mad. Ch. Pr. 537; 4 Madd. R. 249; 1 Bro. C. C. 269; 12 Ves. 197; 3 Younge & J. 150; 1 Rus. R. 141.

2. In Pennsylvania, there is no such thing as an equitable mortgage. 3 P. S. R; 233; 3 Penna. R. 239; 17 S. & R. 70; 1 Penna. R. 447.

EQUITY. In the early history of the law, the sense affixed to this word was exceedingly vague and uncertain. This was owing, in part, to the fact, that the chancellors of those days were either statesmen or ecclesiastics, perhaps not very scrupulous in the exercise of power. It was then asserted that equity was bounded by no certain limits or rules, and that it was alone controlled by conscience and natural justice. 3 Bl. Com. 43−3, 440, 441.

2. In a moral sense, that is called equity which is founded, ex oequo et bono, in natural justice, in honesty, and in right. In an enlarged. legal view, "equity, in its true and genuine meaning, is the soul and spirit of the law; positive law is construed, and rational law is made by it. In this, equity is made synonymous with justice; in that, to the true and sound interpretation of the rule." 3 Bl. Com. 429. This equity is justly said to be a supplement to the laws; but it must be directed by science. The Roman law will furnish him with sure guides, and safe rules. In that code will be found, fully developed, the first principles and the most important consequences of natural right. "From the moment when principles of decision came to be acted upon in chancery," says Mr. Justice Story, "the Roman law furnished abundant materials to erect a superstructure, at once solid, convenient and lofty, adapted to human wants, and enriched by the aid of human wisdom, experience and learning." Com. on Eq. Jur. _23 Digest, 54.

3. But equity has a more restrained and qualified meaning. The remedies for the redress of wrongs, and for the enforcement of rights, are distinguished into two classes, first, those which are administered in courts of common law; and, secondly, those which are administered in courts of equity. Rights which are recognized and protected, and wrongs which are redressed by the former courts, are called legal rights and legal injuries. Rights which are recognized and protected, and wrongs which are redressed by the latter courts only, are called equitable rights and equitable injuries The former are said to be rights and wrongs at common law, and the remedies, therefore, are remedies at common law; the latter are said to be rights and wrongs in equity, and the remedies, therefore, are remedies in equity. Equity jurisprudence may, therefore, properly be said to be that portion of remedial justice which is exclusively administered by a court of equity, as contradistinguished from that remedial justice, which is exclusively administered by a court of law. Story, Eq. _25. Vide Chancery, and the authiorities there cited; and 3 Chit. Bl. Com. 425 n. 1. Dane's Ab . h. t.; Ayl. Pand. 37; Fonbl. Eq. b. 1, c. 1; Wooddes. Lect. 114 Bouv. Inst. Index, h. t.

EQUITY, COURT OF. A court of equity is one which administers justice, where there are no legal rights, or legal rights, but courts of law do not afford a complete, remedy, and where the complainant has also an equitable right. Vide Chancery.

EQUITY OF REDEMPTION. A right which the mortgagee of an estate has of redeeming it, after it has been forfeited at law by the non−payment at, the time appointed of the money secured by the mortgage to be paid, by paying the amount of the debt, interest and costs.

2. An equity of redemption is a mere creature of a court of equity, founded on this principle, that as a mortgage is a pledge for securing the repayraent of a sum of money to the mortgagee, it is but natural justice to consider the ownership of the land as still vested in the mortgagor, subject only to the legal title of the mortgagee, so far as such legal title is necessary to his security.

3. In Pennsylvania, however, redemption is a legal right. 11 Serg. & Rawle, 223.

4. The phrase equity of redemption is indiscriminately, though perhaps not correctly applied, to the right of the mortgagor to regain his estate, both before and after breach of condition, In North Carolina by statute the former is called a legal right of redemption; and the latter the equity of redemption, thereby keeping a just distinction between these estates. 1 N. C. Rev. St. 266; 4 McCord, 340.

5. Once a mortgage always a mortgage, is a universal rule in equity. The right of redemption is said to be as inseparable from a mortgage, as that of replevying from a distress, and every attempt to limit this right must fail. 2 Chan. Cas. 22; 1 Vern. 33, 190; 2 John. Ch. R. 30; 7 John. Ch. R. 40; 7 Cranch, R. 218; 2 Cowen, 324; 1 Yeates, R. 584; 2 Chan. R. 221; 2 Sumner, R. 487.

6. The right of redemption exists, not only in the mortgagor himself, but in his heirs, and personal representatives, and assignee, and in every other person who has an interest in, or a legal or equitable lien upon the lands; and therefore a tenant in dower, a jointress, a tenant by the curtesy, a remainder−man and a reversioner, a judgment creditor, and every other incumbrancer, unless he be an incumbrancer pendente lite, may redeem. 4 Kent, Com. 156; 5 Pick. R. 149; 9 John. R. 591, 611; 9 Mass. R. 422; 2 Litt. R. 334; 1 Pick. R. 485; 14 Wend. R. 233; 5 John. Ch. R. .482; 6 N. H. Rep. 25; 7 Vin. Ab. 52. Vide, generally, Cruise, Dig. tit. 15, c. 3; 4 Kent, Com. 148; Pow. on Mortg. eh. 10 and 11; 2 Black. Com. 158; 13 Vin. Ab. 458; 2 Supp. to Ves. Jr. 368; 2 Jac. & Walk. 194, n.; 1 Hill. Ab. c. 31; and article Stellionate.

EQUIVALENT. Of the same value. Sometimes a condition must be literally accomplished in forma specifica; but some may be fulfilled by an equivalent, per oequi polens, when such appears to be the intention of the parties; as, I promise to pay you one hundred dollars, and then die, my executor may fulfil my engagement; for it is equivalent to you whether the money be paid to you b me or by him. Roll. Ab. 451; 1 Bouv. Inst. n. 760.

EQUIVOCAL. What has a double sense.

2. In the construction of contracts, it is a general rule that when an expression may be taken in two senses, that shall be preferred which gives it effect. Vide Ambiguity; Construction; Interpretation; and Dig. 22, 1, 4; Id 45, 1, 80; Id. 50, 17, 67.

EQUULEUS. The name of a kind of rack for extorting confessions. Encyc. Lond.

ERASURE, contracts, evidence. The obliteration of a writing; it will render it void or not under the same circumstances as an interlineation. (q. v.) Vide 5 Pet. S. C. R. 560; 11 Co. 88; 4 Cruise, Dig. 368; 13 Vin. Ab. 41; Fitzg. 207; 5 Bing. R. 183; 3 C. & P. 65; 2 Wend. R. 555; 11 Conn. R. 531; 5 M. R. 190; 2 L. R. 291 3 L. R. 56; 4 L. R. 270.

2. Erasures and interlineations are presumed to have been made after the execution of a deed, unless the contrary be proved. 1 Dall. 67; 1 Pet. 169; 4 Bin. 1; 10 Serg. & R. 64, 170, 419; 16 Serg. & R. 44.

EREGIMUS. We have erected. In England, whenever the. right of creating or granting a new office is vested in the king, he must use proper words for the purpose, as eregimus, constituimus, and the like. Bac. Ab. Offices, &c., E.

EROTIC MANIA, med. jur. A name given to a morbid activity of the sexual propensity. It is a disease or morbid affection of the mind, which fills it with a crowd of voluptuous images, and hurries its victim to acts of the grossest licentiousness, in the absence of any lesion of the intellectual powers. Vide Mania.

ERROR. A mistake in judgment or deviation from the truth, in matters of fact and from the law in matters of judgment.

2. − 1 Error of fact. The law has wisely provide that a person shall be excused, if, intending to do a lawful act, and pursuing lawful means to accomplish his object, he commit an act which would be criminal or unlawful, if it were done with a criminal design or in an unlawful manner; for example, thieves break into my house, in the night time, to commit a burglary; I rise out of my bed, and seeing a person with a drawn sword running towards my wife, I take him for one of the burglars, and shoot him down, and afterwards find he was one of my friends, whom, owing to the dimness of the light, I could not recognize, who had lodged with me, rose on the first alarm, and was in fact running towards my wife, to rescue her from the hands of an assassin; still I am innocent, because I committed an error as to a fact, which I could not know, and had, no time to inquire about.

3. Again, a contract made under a clear error is not binding; as, if the seller and purchaser of a house situated in Now York, happen to be in Philadelphia, and, at the time of the sale, it was unknown to both parties that the house was burned down, there will be no valid contract; or if I sell you my horse Napoleon, which we both suppose to be in my stable, and at the time of the contract he is dead, the sale is void. 7 How. Miss. R. 371 3 Shepl. 45; 20 Wend. 174; 9 Shepl. 363 2 Brown, 27; 5 Conn. 71; 6 Mass. 84; 12 Mass. 36. See Sale.

4. Courts of equity will in general correct and rectify all errors in fact committed in making deeds and contracts founded on good considerations. See Mistake.

5. − 2. Error in law. As the law is, or which is the same thing, is presumed to be certain and definite, every man is bound to understand it, and an error of law will not, in general, excuse a man, for its violation.

6. A contract made under an error in law, is in general binding, for were it not so, error would be urged in almost every case. 2 East, 469; see 6 John. Ch. R. 166 8 Cowen, 195; 2 Jac. & Walk. 249; 1 Story, Eq. Jur. 156; 1 Younge & Coll. 232; 6 B. & C. 671 Bowy. Com. 135; 3 Sav. Dr. Rom. App. viii. But a foreign law will for this purpose be considered as a fact. 3 Shepl. 45; 9 Pick. 112; 2 Ev. Pothier, 369, &c. See, also, Ignorance; Marriage; Mistake.

7. By error, is also understood a mistake made in the trial of a cause, to correct which a writ of error may be sued out of a superior court.

ERROR, WRIT OF. A writ of error is one issued fro a superior to an inferior court, for the purpose of bringing up the record and correcting an alleged error committed in the trial in the court below. But it cannot deliver the body from prison. Bro. Abr. Acc. pl. 45. The judges to whom the writ is directed have no power to return the record nisi judicium inde redditum sit. Nor can it be brought except on the final judgment. See Metcalf's Case, 11 Co. Rep. 38, which is eminently instructive on this subject. Vide Writ of Error.

ESCAPE. An escape is tho deliverance of a person who is lawfully imprisoned, out of prison, before such a person is entitled to such deliverance by law. 5 Mass. 310.

2. It will be proper to consider, first, what is a lawful imprisonment; and, secondly, the different kinds of escapes.

3. When a man is imprisoned in a proper place under the process of a court having jurisdiction in the case, he is lawfully imprisoned, notwithstanding the proceedings may be irregular; but if the court has not jurisdiction the imprisonment is unlawful, whether the process be regular or otherwise. Bac. Ab. Escape. in civil cases, A 1; 13 John. 378; 5 John. 89; 1 Cowen, 309 8 Cowen, 192; 1 Root, R. 288.

4. Escapes are divided into voluntary and negligent; actual or constructive; civil and criminal and escapes on mesne process and execution.

5. − 1. A voluntary escape is the giving to a prisoner, voluntarily, any liberty not authorized by law. 5 Mass . 310; 2 Chipm. 11. Letting a prisoner confined under final process, out of prison for any, even the shortest time, is an escape, although he afterwards return; 2 Bl. Rep. 1048; 1 Roll. Ab. 806; and this may be, (as in the case of

imprisonment under a ca. sa.) although an officer may accompany him. 3 Co. 44 a Plowd. 37; Hob. 202; 1 Bos. & Pull. 24 2 Bl. Rep. 1048.

6. The effect of a voluntary escape in a civil case, when the prisoner is confined under final process, is to discharge the debtor, so that he cannot be retaken by the sheriff; but he may be again arrested if he was confined only on mesne process. 2 T. R. 172; 2 Barn. & A. 56. And the plaintiff may retake the prisoner in either case. In a criminal case, on the contrary, the officer not only has a right to recapture his prisoner, but it is his duty to do so. 6 Hill, 344; Bac. Ab. Escape in civil cases, C.

7. − 2. A negligent escape takes place when the prisoner goes at large, unlawfully, either because the building or prison in which he is confined is too weak to hold him, or because the keeper by carelessness lets him go out of prison.

8. The consequences of a negligent escape are not so favorable to the prisoner confined under final process, as they are when the escape is voluntary, because in this case, the prisoner is to blame. He may therefore be retaken.

9. − 3. The escape is actual, when the prisoner in fact gets out of prison and unlawfully regains his liberty.

10. − 4. A constructive escape takes place when the prisoner obtains more liberty than the law allows, although he still remains in confinement The following cases are examples of such escapes: When a man marries his prisoner. Plowd. 17; Bac. Ab. Escape, B 3. If an underkeeper be taken in execution, and delivered at the prison, and neither the sheriff nor any authorized person be there to receive him. 5 Mass. 310. And when the keeper of a prison made one of the prisoners confined for a debt a turnkey, and trusted him with the keys, it was held that this was a constructive escape. 2 Mason, 486.

11. Escapes in civil cases are, when the prisoner is charged in execution or on mesne process for a debt or duty, and not for a criminal offence, and he unlawfully gains his liberty. In this case, we have seen, the prisoner may be retaken, if the escape have not been voluntary; and that he may be retaken by the plaintiff when the escape has taken place without his fault, whether the defendant be confined in execution or not; and that the sheriff may retake the prisoner, who has been liberated by him, when he was not confined on final process.

12. Escapes in criminal cases take place when a person lawfully in prison, charged with a crime or under sentence, regains his liberty unlawfully. The prisoner being to blame for not submitting to the law, and in effecting his escape, may be retaken whether the escape was voluntary or not. And he may be indicted, fined and imprisoned for so escaping. See Prison.

13. Escape on mesne process is where the prisoner is not confined on final process, but on some other process issued in the course of the proceedings, and unlawfully obtains his liberty, such escape does not make the officer liable, provided that on the return day of the writ, the prisoner is forthcoming.

14. Escape on final process is when the prisoner obtains his liberty unlawfully while lawfully confined, and under an execution or other final decree. The officer is then, in general, liable to the plaintiff for the amount of the debt.

ESCAPE, WARRANT. A warrant issued in England against a person who being charged in custody in the king's bench or Fleet prison, in execution or mesne process, escapes and goes at large. Jacob's L. D. h. t.

ESCHEAT, title to lands. According to the English law, escheat denotes an obstruction of the course of descent, and a consequent determination of the tenure, by some unforeseen contingency; in which case the land naturally results back, by a kind of reversion, to the original grantor, or lord of the fee.. 2 Bl. Com. 244.

2. All escheats, under the English law, are declared to be strictly feudal, and to import the extinction of tenure. Wright on Ten. 115 to 117; 1 Wm. Bl. R. 123.

3. But as the feudal tenures do not exist in this country, there are no private persons who succeed to the inheritance by escheat. The state steps in, in the place of the feudal lord, by virtue of its sovereignty, as the original and ultimate proprietor of all the lands within its jurisdiction. 4 Kent, Com. 420. It seems to be the universal rule of civilized society, that when the−deceased owner has left no heirs, it should vest in the public, and be at the disposal of the government. Code, 10, 10, 1; Domat, Droit Pub. liv. 1, t. 6, s. 3, n. 1. Vide 10 Vin. Ab. 139; 1 Bro. Civ. Law, 250; 1 Swift's Dig. 156; 2 Tuck. Blacks. 244, 245, n.; 5 Binn. R. 375; 3 Dane's Ab. 140, sect. 24; Jones on Land Office Titles in Penna. 5, 6, 93. For the rules of the Roman Civil Law, see Code Justinian, book 10.

ESCHEATOR. The name of an officer whose duties are generally to ascertain what escheats have taken place, and to prosecute the claim of the commonwealth for the purpose of recovering the escheated property. Vide 10 Vin. Ab. 158.

ESCROW, conveyancing, contracts. A conditional delivery of a deed to a stranger, and not to the grantee himself, until certain conditions shall be performed, and then it is to be delivered to the grantee. Until the condition be performed and the deed delivered over, the estate does not pass, but remains in the grantor. 2 Johns. R. 248; Perk. 137, 138.

2. Generally, an escrow takes effect from the second delivery, and is to be considered as the deed of the party from that time; but this general rule does not apply when justice requires a resort to fiction. The relation back to the first delivery, so as to give the deed effect from that time, is allowed in cases of necessity, to avoid injury to the operation of the deed, from events happening between the first and second delivery. For example, when a feme sole makes a deed and delivers it as an escrow, and then marries before the second delivery, the relation back to the time when she was sole, is necessary to render the deed valid. Vide 2 Bl. Com. 307; 2 Bouv. Inst. n. 2024; 4 Kent, Com. 446; Cruise, Dig. t. 32, c. 2, s. 87 to 91; Com. Dig. Fait, A 3; 13 Vin. Ab. 29; 5 Mass. R. 60; 2 Root, R. 81; 5 Conn. R. 113; 1 Conn. R. 375; 6 Paige's R. 314; 2 Mass. R. 452; 10 Wend. R. 310; 4 Green]. R. 20; 2 N. H. Rep. 71; 2 Watts', R. 359; 13 John. R. 285; 4 Day's R. 66; 9 Mass. R. 310 1 John. Cas. 81; 6 Wend. R. 666; 2 Wash. R. 58; 8 Mass. R. 238; 4 Watts, R. 180; 9 Mass. Rep. 310; 2 Johns. Rep. 258−9; 13 Johns. Rep. 285; Cox, Dig. tit, Escrow; Prest. Shep. Touch. 56, 57, 58; Shep. Prec. 54, 56; 1 Prest. Abst. 275; 3 Prest. Ab. 65; 3 Rep. 35; 5 Rep. 84.

ESCUAGE, old Eng. law. Service of the shield. Tenants who hold their land by escuage, hold by knight's service. 1 Tho. Co. Litt. 272; Littl. s. 95, 86 b.

ESNECY. Eldership. In the English law, this word signifies the right which the eldest coparcener of lands has to choose one of the parts of the estate after it has been divided.

ESPLEES. The products which the land or ground yields; as the hay of the meadows, the herbage of the pasture, corn or other produce of the arable, rents and services. Termes de la Ley; see 11 Serg. & R. 2−5; Dane's Ab. Index, h. t.

ESPOUSALS, contracts. A mutual promise between a man and a woman to marry each other, at some other time: it differs from a marriage, because then the contract is completed. Wood's Inst. 57; vide Dig. 23, 1, 1; Code, 5, 1, 4; Novel, 115, c. 3, s. 11; Ayliffe's Parerg. 245 Aso & Man. Inst. B. 1, t. 6, c. 1, _1.

ESQUIRE. A title applied by courtesy to officers of almost every description, to members of the bar, and others. No one is entitled to it by law, and, therefore, it confers, no distinction in law.

2. In England, it is a title next above that of a gentleman, and below a knight. Camden reckons up four kinds of esquires, particularly regarded by the heralds: 1. The eldest sons of knights and their eldest sons, in perpetual succession. 2. The eldest sons of the younger sons of peers, and their eldest sons in like perpetual succession. 3. Esquires created by the king's letters patent, or other investiture, and their eldest sons. 4. Esquires by virtue of their office, as justices of the peace, and others who bear any office of trust under the crown.

ESSOIN, practice. An excuse which a party bound to be in court on a particular day, offers for not being there. 1 Sell. Pr. 4; Lee's Dict. h. t.

2. Essoin day is the day on which the writ is returnable. It is considered for many purposes as the first day of the term. 1 T. R. 183. See 2 T. R. 16 n.; 4 Moore's R. 425. Vide Exoine.

ESTABLISH. This word occurs frequently in the Constitution of the United $tates, and it is there used in different meanings. 1. To settle firmly, to fix unalterably; as, to establish justice, which is the avowed object of the constitution. 2. To make or form as, to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, which evidently does not mean that these laws shall be unalterably established as justice. 3. To found, to create, to regulate; as, congress shall have power to establish post roads and post offices. 4. To found, recognize, confirm or admit; as, congress shall make no law respecting an establishment of religion. 5. To create, to ratify, or confirm; as, we, the people, &c., do ordain and establish this constitution, 1 Story, Const. _454.

ESTADAL, Spanish law. In Spanish America, this was a measure of land of sixteen square varas or yards. 2 White's Coll. 139.

ESTATE. This word his several meanings: 1. In its most extensive sense, it is applied to signify every thing of which riches or, fortune may consist and includes personal and real property; hence we say personal estate, real estate. 8 Ves. 504. 2. In its more limited sense, the word estate is applied to lands, It is so applied in two senses. The first describes or points out the land itself, without ascertaining the extent or nature of the interest therein; as "my estate at A." The second, which is the proper and technical meaning of estate, is the degree, quantity, nature

and extent of interest which one has in real property; as, an estate in fee, whether the same be a fee simple or fee tail; or an estate for life or for years, &c. Lord Coke says: Estate signifies such inheritance, freehold, term of years, tenancy by statute merchant, staple, eligit, or the like, as any man hath in lands or tenements, &c. Co. Lit. _650, 345 a. See Jones on Land Office Titles in Penna. 165−170.

2. In Latin, it is called status, because it signifies the condition or−circumstances in which the owner stands with regard to his property..

3. Estates in land may be considered in a fourfold view with regard, 1. To the quantity of interest which the tenant has in the tenement. 2. To the time during which that quantity of interest is to be enjoyed. 3. To the number and connexion of the tenants. 4. To what conditions may be annexed to the estate.

4. − 1. The quantity of interest which the tenant has in his tenement is measured by its duration and extent. An estate, considered in this point of view, is said to be an estate of freehold, and an estate less than freehold.

5.− _1. Freehold estates are of inheritance and not of inheritance. An estate in fee, (q. v.) which is the estate most common in this country, is a freehold estate of inheritance. Estates of freehold not of inheritance, are the following:

6. − 1st. Estates for life. An estate for life is a freehold interest in lands, the duration of which is confined to the life or lives of some particular person or persons, or to the happening or not happening of some uncertain event.

7. Estates for life are divided into conventional or legal estates. The first created by the act of the parties, and the second by operation of law.

8. − 1. Life estates may be created by express words; as, if A conveys land to B, for the term of his natural life; or they may arise by construction of law, as, if A conveys land to B, without specifying the term or duration, and without words of limitation. In the last case, B cannot have an estate in fee, according to. the English law, and according to the law of those parts of the United States which have adopted and not altered the common law in this particular, but he will take the largest estate which can possibly arise from the grant, and that is an estate for life. Co. Litt. 42, a. So a conveyance " to I M, and his generation, to endure as long as the waters of the Delaware should run," passes no more than a life estate. 3 Wash. C. C. Rep. 498. The life estate may be either for a man's own life, or for the life of another person, and in this last case it is termed an estate per autre vie. There are some estates for life, which may depend upon future contingencies, before the death of the person to whom they are granted; for example, an estate given to a woman dum sola fuerit, or durante viduitate, or to a man and woman during coverture, or as long as the grantee shall dwell in a particular house, is determinable upon the happening of the event. In the same manner, a house usually worth one hundred dollars a year, may be granted to a person still he shall have received one thousand dollars; this will be an estate for life, for as the profits are uncertain, and may rise or fall, no precise time can be fixed for the determination of the estate. On the contrary, where the time is fixed, although it may extend far beyond any life, as a terw for five hundred years, this does not create a life estate.

9. − 2. The estates for life created by operation of law, are, 1st. Estates tail after possibility of issue extinct. 2d. Estates by the curtesy. 3d. Dower. 4th. Jointure. Vide Cruise. Dig. tit. 3; 4 Kent, Com. 23; 1 Brown's Civ. Law, 191; 2 Bl. Com. 103. The estate for life is somewhat similar to the usufruct (q. v.) of the civil law.

10. The incidents to an estate for life, are principally the following: 1. Every tenant for life, unless restrained by covenant or agreement, may of common right take upon the land demised to him reasonable estovers or bote's. Co. Litt. 41.

11. − 2. The tenant for life, or his representatives, shall not be pre−judiced by any sudden determination of his estate, because such determination is contingent or uncertain. Co. Litt. 55.

12. − 3. Under tenants or lessees of an estate for life, have the same, and even greater indulgences than the lessors, the original tenants for life; for when the tenant for life shall not have the emblements, because the estate determines by his own act, the exception shall not reach his lessee, who is a third person. l Roll. Ab. 727 2 Bl. Com. 122.

13. − 2d. Estates by the curtesy. An estate by the curtesy is an estate for life, created by act of law, which is defined as follows: When a man marries a woman, seised at any time during the coverture of an estate of inheritance, in severalty, in coparcenary, or in common, and has issue by her born alive, and which migbt by possibility inherit the same estate as heir to the wife, and the wife dies in the lifetime of the hushand, he holds the lands during, his life by the curtesy of England, and it is immaterial whether the issue be living at the time of the seisin, or at the death of the wife, or whether it was born before or after the seisin. Litt. s. 35; Co. Litt. 29, b; 8 Co.

34. By Act of Asserably of Pennsylvania, the birth of issue is not necessary, in all cases where the issue, if any, would have inherited.

14. There are four requisites indispensably necessary to the existence of this estate: 1. Marriage. 2. Seisin of the wife, which must have been seisin in deed, and not merely seisin in law; it seems, however, that the rigid rules of the common law, have been relayed, in this respect, as to what is sometimes called waste or wild lands. 1 Pet. 505. 3. Issue. 4. Death of the wife.

15. − 1. The marriage must be a lawful marriage; for a void marriage does not entitle the hushand to the curtesy; as if a married man were to marry a second wife, the first being alive, he would not be entitled to the curtesy in such second wife's estate. But if the marriage had been merely voidable, he would be entitled, because no marriage, merely voidable, can be annulled after the death of the parties. Cruise, Dig. tit. 5, c. 1, s. 6.

16. − 2. The seisin of the wife must, according to the English law, be a seisin in deed; but this strict rule has been somewhat qualified by circumstances in this country. Where the wife is owner of wild uncultivated land, not held adversely, she is considered as seised in fact, and the hushand is entitled to his curtesy. 8 John. 262 8 Cranch, 249; 1 Pet. 503 1 Munf. 162 1 Stow. 590. When the wife's state is in reversion or remainder, the hushand is not, in general, entitled to the curtesy, unless the particular estate is elided during coverture. Perk. s. 457, 464; Co. Litt. 20, a; 3 Dev. R. 270; 1 Sumn. 263; but see 3 Atk. 469; 7 Viner, Ab. 149, pl. 11. The wife's seisin must have been such as to enable her to inherit. 5 Cowen, 74.

17. − 3. The issue of the marriage, to entitle the hushand to the curtesy, must possess the following qualifications: 1. Be born alive. 2. In the lifetime of the mother. 3. Be capable of inheriting the estate.

18. − 1st. The issue must be born alive. As to what will be considered life, see Birth; Death; Life.

19. − 2d. The issue must be born in the lifetime of the mother; and if the child be born after the death of the mother, by the performance of the Caesarian operation, the hushand will not be entitled to the curtesy; as there was no issue born at the instant of the wife's death, the estate vests immediately on the wife's death to the child, in ventre sa mere, and the estate being once vested, it cannot be taken from him. Co. Litt. 29, b.; 8 Co. Rep., 35, a. It is immaterial whether the issue be born before or after the seisin of the wife. 8 Co. Rep. 35, b.

20. − 3d. The issue must be capable of inheriting the estate; When, for example, lands are given to a woman and the heirs male of her body, and she has a daughter, this issue will not enable lier hushand to take his curtesy. Co. Litt. 29, a.

21. − 4th. The death of the wife is requisite to make the estate by the curtesy complete.

22. This estate is generally prevalent in the United States; in some of them it has received a modification. In Pennsylvania the right of the hushand takes place although there be no issue of the marriage, in all cases where the issue, if any, would have inherited. In Vermont, the title by curtesy has been laid under the equitable restriction of existing only in the event that the children of the wife entitled to inherit, died within age and without children in South Carolina, tenancy by the curtesy, eo nomine, has ceased by the provisions of an act passed in 1791, relative to the distribution of intestates estates, which gives to the hushand surviving his wife, the same share of her real estate, as she would have taken out of his, if left a widow, and that is one moiety, or one−third of it in fee, according to circumstances. In Georgia, tenancy by the curtesy does not exist, because, since 1785, all marriages vest the real, equally with the personal estate, in the hushand. 4 Kent, Com. 29. In Louisiana, where the common Iaw has not been adopted in this respect, this estate is unknown.

23. This estate is not peculiar to the English law, as Littleton erroneously supposes; Litt. s. 35; for it is. to be found, with some modifications, in the ancient laws of Scotland, Ireland, Normandy and Germany. In France there were several customs, which gave a somewhat similar estate to the surviving hushand, out of the wife's inheritances. Merlin, Repert. mots Linotte, et Quarte de Conjoint pauvre.

24. − 3d. Estate in dower. Dower is an estate for life which the law gives the widow in the third part of the lands and tenements, or hereditaments of which the hushand was solely seised, at any time during the coverture, of an estate in fee or in tail, in possession, and to which estate in the lands and tenements the issue, if any of such widow, might, by possibility, have inherited. In Pennsylvania, the sole seisin of the. hushand is not necessary. Watk. Prin. Con. 38; Lit. _36; Act of Penna. March 31, 1812.

25. To create a title to the dower, three things are indispensably requisite: 1. Marriage. This must be a marriage not absolutely void, and existing at the death of the hushand; a wife de facto, whose marriage is voidable by decree, as well as a wife de jure, is entitled to it; and the wife shall be endowed, though the marriage be within the age of consent, and the hushand dies within that age. Co. Litt. 33, a; 7 Co. 42; Doct. & Stud. 22; Cruise, Dig. t. 6,

c. 2, s, 2, et seq.

26. − 2. Seisin. The hushand must have been seised, some time during the coverture, of the estate of which the wife is dowable. Co. Litt. 31, a. An actual seisin is not indispensable, a seisin in law is sufficient. As to the effect of a transitory seisin, see 4 Kent, Com. 38; 2 Bl. Com. 132; Co. Litt. 31, a.

27. − 3. Death of the hushand. This must be a natural death; though there are authorities which declare that a civil death shall have the same effect. Cruise, Dig. tit. 6, ch. 2, _22. Vide, generally, 8 Vin. Ab. 210; Bac. Ab. Dower; Com. Dig. Dower; Id. App. tit. Dower; 1 Supp. to. Ves. jr. 173, 189; 2 Id. 49; 1 Vern. R. by Raithby, 218, n. 358, n.; 1 Salk. R. 291; 2 Ves. jr. 572; 5 Ves. 130; Arch. Civ. Pl. 469; 2 Sell. Pr. 200; 4 Kent, Com. 35; Amer. Dig. h. t.; Pothier, Traite du Douaire; 1 Swift's Dig. 85; Perk. 300, et seq.

28. − 4th. Estate tail after possibility of issue extinct. By this awkward, but perhaps necessary periphrasis, justified by Sir William Blackstone, 2 Com. 124, is meant the estate which is thus described by Littleton, _32 when tenements are given to a man and his wife in special tail, if one of them die without issue, the survivor is tenant in tail after possibility of issue extinct."

29. This estate though, strictly speaking, not more than an estate for life, partakes in some circumstances of the nature of an estate tail. For a tenant in tail after possibility of issue extinct, has eight qualities or privileges in common with a tenant in tail. 1. He is dispunishable for waste. 2. He is not compellable to attorn. 3. He shall not have aid of the person in reversion. 4. Upon his alienation no writ of entry in consimili casu lies. 5. After his death, no writ of intrusion lies. 6. He may join the mise in a writ of right in a special manner. 7. In a praecipe brought by him he shall not name himself tenant for life. 8. In a praecipe brought against him, he shall not be named barely tenant for life.

30. There are, however, four qualities annexed to this estate, which prove it to be, in fact, only an estate for life. 1. If this tenant makes a feoffment in fee, it is a forfeiture. 2. If an estate tail or in fee descends upon him, the estate tail after possibility of issue extinct is merged. 3. If he is impleaded and makes default, the person in reversion shall be received, as upon default of any other tenant for life. 4. An exchange between this tenant and a bare tenant for life, is good; for, with respect to duration, their. estates are equal. Cruise, Dig. tit. 4; Tho. Co. Litt. B. 2, c. 17; Co. Lit. 28, a.

31. Nothing but absolute impossibility of having issue, can give rise to this estate. Thus if a person gives lands to a man and his, wife, and to the heirs of their two bodies, and they live to a hundred years, without having issue, yet they are tenants in tail; for the law' sees no impossibility of their having issue, until the death of one of them. Co. Litt. 28, a. See Tenant in tail after possibility of issue extinct.

32. − _2. An estate less than freehold is an estate which is not in fee, nor for life; for although a man has a lease for a thousand years, which is much longer than any life, yet it is not a freehold, but a mere estate for years, which is a chattel interest. Estates less than freehold are estates for years, estates at will, and estates at sufferance.

33. − 1. An estate for years, is one which is created by a leas; for years, which is a contract for the posspssion and profits of land for a determinate period, with the recompense of rent; and it is deemed an estate for years, though the number of years should exceed the ordinary limits of human life; and it is deemed an estate for years though it be limited to less than a single year. It is denominated a term, because its duration is absolutely defined.

34. An estate for life is bigher than an estate for years, though the latter should be for a thousand years. Co. Litt. 46, a; 2 Kent, Com. 278; 1 Brown's Civ. Law, 191; 4 Kent, Com. 85; Cruise's Dig. tit. 8; 4 Rawle's R. 126; 8 Serg. & Rawle, 459; 13 Id. 60; 10 Vin. Ab. 295, 318 to 325.

35. − 3. An estate at will is not bounded by any definite limits with respect to time; but as it originated in mutual agreement, so it depends upon the concurrence of both parties. As it depends upon the will of both, the dissent of either may determine it. Such an estate or interest cannot, consequently, be the subject of conveyance to a stranger, or of transmission to representatives. Watk. Prin. Con. 1; Litt. _68.

36. Estates at will have become infrequent under the operation of judicial decisions. Where no certain term is agreed on, they are now construed to be tenancies from year to year, and each party is bound to give reasonable notice of an intention to terminate the estate. When the tenant holds over by consent given, either expressly or by implication, after the determination of a lease for years, it is held evidence of a new contract, without any definite period, and is construed. to. be a tenancy from year to year. 4 Kent, Com. 210; Cruise, Dig. tit. 9, c . 1.

37.−3. An estate at sufferance. The session of land by lawful title, but holds over by wrong after the determination of his interest. Co. Litt. 57, b. He has a bare naked possession, but no estate which he can transfer or transmit, or which is capable of enlargement by. release, for he stands in no privity to his landlord.

38. There is a material distinction between the case of a person coming to an estate by act of the party, and afterwards holding over, and by act of the law and then holding over. In the first case, he is regarded as a tenant at sufferauce; and in the other, as an intruder, abator, and trespasser. Co. Litt. 57, b; 2 Inst. 134 Cruise, Dig. t. 9, c. 2 4 Kent, Com. 115 13 Serg. & Rawle, 60 8 Serg. & Rawle, 459; 4 Rawle, 459; 4 Rawle's R. 126.

39. − II. As to the time of their enjoyment, estates are considered either in possession, (q. v.) or expectancy. (q. v.) The latter are either remainders, (q. v.) which are created, by the act of the parties, and these are vested or contingent, or reversions, (q, v.) created by act of law.

40. − III. An estate way be holden in a variety of ways the most common of which are, 1. In severalty. 2. In joint tenancy. 3. In common. 4. In coparcenary. These will be separately considered.

41. − 1. dn estate in severally, is where only one tenant holds the estate in his own right, without any other person being joined or connected with him, in point−of interest, during the continuance of his estate.

42. − 2. dn estate in joint tenancy, is where lands or tenements are granted to two or more persons, to hold in fee simple, fee tail, for life, for years, or at will. 2 Bl. Com. 179. Joint tenants always take by purchase, and necessarily have equal shares; while tenants in common, also coparceners, claiming under ancestors in different degrees, may have unequal shares and the proper and best mode of creating an estate in joint tenancy, is to limit to A B and C D, and their assigns, if it be an estate for life; or to A B and C D, and their heirs, if in) fee. Watk. Prin. Con. 86.

43. The creation of the estate depends upon the expression in the deed or devise, by which the tenants hold, for it must be created by the acts of the parties, and does not result from the operation of law. Thus, an estate given to a number of persons, without any restriction or explanation, will be construed a joint tenancy; for every part of the grant can take effect only, by considering the estate equal in all, and the union of their names gives them a name in every respect.

44. The properties of this estate arise from its unities; these are, 1. Unity of title; the estate must have been created and derived from one and the same conveyance. 2. There must be a unity of time; the estate must be created and vested at the same period. 3. There must be a unity of interest; the estate must be for the same duration, and for the same quantity of interest. 4. There must be a unity of possession; all the tenants must possess and enjoy at the same time, for each must have an entire possession of every parcel, as of the whole. One has not possession of one−half, and another of the other half, but each has an undivided moiety of the whole, and not the whole of an undivided moiety.

45. The distinguishing incident of this estate, is the right of survivorship, or jus accrescendi; at common law, the entire tenancy or estate, upon the death of any of the joint tenants, went to the survivors, and so on to the last survivor, who took an estate of inheritance. The right of survivorship, except, perhaps, in estates held in trust, is abolished in Pennsylvania, New York, Virginia, Kentucky, Indiana, Missouri, Tennessee, North and−South Carolina, Georgia, and Alabama. Griffith's Register, h. t. In Connecticut it never was recognized. 1 Root, Rep. 48; 1 Swift's Digest, 102. Joint tenancy may be destroyed by destroying any of its constituent unities, except that of time. 4 Kent, Com. 359. Vide Cruise, Dig. tit. 18; 1 Swift's Dig. 102; 14 Vin. Ab. 470; Bac. Ab. Joint Tenants, &c.; 3 Saund. 319, n. 4; 1 Vern. 353,; Com. Dig. Estates by Grant, K 1; 4 Kent, Com. 353; 2 Bl. Com. 181; 1 Litt. see. 304 2 Woodd. Lect. 127; 2 Preston on Abst. 67; 5 Binn. Rep . 18; Joint tenant; Survivor; Entirety.

46. − 3. An estate in common, is one which is held by two or more persons by unity of possession.

47. They may acquire their estate by purchase, and hold by several and distinct titles, or by title derived at the same time, by the same deed or will; or by descent. In this respect the American law differs from the English common law.

48. This tenancy, according to the common law, is created by deed or will, or by change of title from joint tenancy or coparcenary; or it arises, in many cases, by construction of law. Litt. sec. 292, 294, 298, 302; 2 Bl. Com. 192; 2 Prest. on Abstr. 75.

49. In this country it maybe created by descent, as well as by deed or will. 4 Kent, Com. 363. Vide Cruise, Dig. tit. 20 Com. Dig. Estates by Grant, K 8.

50. Estates in common can be dissolved in two ways only; first, by uniting all the titles and interests in one tenant secondly, by making partition.

51. − 4. An estate in coparcenary, is an estate of inheritance in lands which descend from the ancestor to two or more persons who are called coparceners or parceners.

52. This is usually applied, in England, to cases where lands descend to females, when there are no male heirs.

53. As in the several states, estates generally descend to all the children equally, there is no substantial difference between coparceners and tenants in common. The title inherited by more persons than one, is, in some of the states, expressly declared to be a tenancy in common, as in New York and New Jersey, and where it is not so declared the effect is the same; the technical distinction between coparcenary and estates in common may be considered as essentially extinguished in the United States. 4 Kent, Com. 363. Vide Estates.

54. − IV. An estate upon condition is one which has a qualification annexed to it by which it may, upon the happening or not happening of a particular event, be created, or enlarged, or destroyed. Conditions may be annexed to estates in fee, for life, or for years. These estates are divided into estates upon condition express, or in deed; and upon conditions implied, or in law.

55. Estates upon express conditions are particularly mentioned ’in the contract between the parties., Litt. s. 225; 4 Kent, Com. 117; Cruise, Dig. tit. 13.

56. Estates upon condition in law are such as have a condition impliedly annexed to them, without any condition being specified in the deed or will. Litt. s. 378, 380; Co. Litt. 215, b; 233, b; 234, b.

57. Considered as to the title which may be had in them, estates are legal and equitable. 1. A legal estate is one, the right to which can be enforced in a court of law. 2. An equitable, is a right or interest in land, which not having the properties of a legal estate, but being merely a right of which courts of equity will take notice, require the aid of such a court to, make it available. See, generally, Bouv. Inst. Index, h. t.

ESTER EN JUGEMENT, French law. Stare in judicio. To appear before a tribunal either as plaintiff or defendant.

ESTIMATION OF VALUES. As the value of most things is variable, according to circumstances, the law in many cases determines the time at which the value of a thing should be taken; thus, the value of an advancement, is to be taken at the time of the gift. 1 Serg. & R. 425. Of a gift in frank−marriage, at the time of partition between the parceners, and the bringing of the gift in frank−marriage into hotchpot. But this is a case sui generis. Co. Lit. _273; 1 Serg. & R. 426. Of the yearly value of properties; at the time of partition. Tho. Co. Lit. 820. Of a bequest of so pieces of coin; at the time of the will made. Godolph, 0. L. 273, part 3, chap. 1. _3. Of assets to make lineal warranty a bar; at the time of the descent. Co. Lit. 374, b. Of lands warranted; at the time of the warranty. Beames’ Glanv. 75 n.; 2 Serg. & Rawle, 444, see Eviction 2. Of a ship lost at sea; her value is to be taken at the port from which she sailed, deducting one−fifth; 2 Serg. & Rawle, 258; 1 Caines, 572; 2 Condy. Marshall, 545; but different rules prevail on this subject in different nations. 2 Serg. & R. 259. Of goods lost at sea; their value is to be taken at the port of delivery. 2 Serg. & R. 257. The comparative value of a life estate, and the remainder in fee, is one−third for the life and two−thirds for the remainder in fee; and moneys due upon a mortgage of lands devised to one for life, and the remainder in fee to another, are to be apportioned by the same rule. 1 Vern. 70; 1 Chit. Cas. 223, 224, 271; Francis’ Max. 3, _12, and note. See Exchange, 3−2.

ESTOPPEL, pleading. An estoppel is a preclusion, in law, which prevents a man from alleging or denying a fact, in consequence o his own previous act, allegation or denial of a contrary tenor. Stepb. Pl. 239. Lord Coke says, " an estoppel is, when a man is concluded by his own act or acceptance, to say the truth." Co. Litt. 352, a. And Blackstone defines "an estoppel to be a special plea in bar, which happens where a man has done some act, or executed some deed, which estops or precludes him from averring any thing to the contrary. 3 Cora. 308. Estoppels are odious in law; 1 Serg. & R. 444; they are not admitted in equity against the truth. Id. 442. Nor can jurors be estopped from saying the truth, because they are sworn to do so, although they are estopped from finding against the admission of the parties in their pleadings. 2 Rep. 4; Salk. 276; B. N. P. 298; 2 Barn. & Ald. 662; Angel on Water Courses, 228−9. See Co. Litt. 352, a, b, 351, a. notes.

2. An estoppel may, arise either from matter of record; from the deed of the party; or from matter in Pays; that is, matter of fact.

3. Thus, any confession or admission made in pleading, in a court of record, whether it be express, or implied from pleading over without a traverse, will forever preclude the party from afterwards contesting the same fact in any subsequent suit with his adversary. Com. Dig. Estoppel, A 1. This is an estoppel by matter of record.

4. As an instance of an estoppel by deed, may be mentioned the case of a bond reciting a certain fact. The party executing that bond, will be precluded from afterwards denying in any action brought upon that instrument, the fact , so recited. 5 Barn. & Ald. 682.

5. An example of an estoppel by matter in pays occurs when one man Las accepted rent of another. He will be

estopped from afterwards. denying, in any action, with that person, that he was, at the time of such acceptance, his tenant. Com. Dig. Estoppel, A 3 Co. Litt. 352, a.

6. This doctrine of law gives rise to a kind of pleading that is neither by way of traverse, nor confession. and avoidance: viz. a pleading, that, waiving any question of fact, relies merely on the estoppel, and, after stating the previous act, allegation, or denial, of the opposite party, prays judgment, if he shall be received or admitted to aver contrary to what he before did or said. This pleading is called pleading by way of estoppel. Steph. 240a

7. Every estoppel ought to be reciprocal, that is, to bind both parties: and this is the reason that regularly a stranger shall neither take advantage or be bound by an estoppel. It should be directly affirmative, and not by inference nor against an estoppel. Co. Lit. 352, a, b; 1 R. 442−3; 9 Serg. & R. 371, 430; 4 Yeates' 38 1 Serg. & R. 444; Corn. Dig. Estoppel, C 3 Johns. Cas. 101; 2 Johns. R. 382; 8 W. & S. 135; 2 Murph. 67; 4 Mont. 370. Privies in blood, privies in estate, and privies in law, are bound by, and may take advantage of estoppels. Co. Litt. 352; 2 Serg. & Rawle, 509; 6 Day, R. 88. See the following cases relating to estoppels by; Matter of record: 4 Mass. R. 625; 10 Mass. R. 155; Munf. R. 466; 3 East, R. 354; 2 Barn. & Ald. 362, 971; 17 Mass. R. 365; Gilm. R. 235; 5 Esp. R. 58; 1 Show. 47; 3 East, R. 346. Matter of writing: 12 Johns. R. 347; 5 Mass. R. 395; Id. 286; 6 Mass. R. 421; 3 John. Cas. 174; 5 John. R. 489; 2 Caines' R. 320; 3 Johns. R. 331; 14 Johns. R. 193; Id. 224; 17 Johns. R. 161; Willes, R. 9, 25; 6 Binn. R. 59; 1 Call, R. 429; 6 Munf. R. 120; 1 Esp. R. 89; Id. 159; Id. 217; 1 Mass. R. 219. Matter in pays: 4 Mass. R. 181; Id. 273 15 Mass. R. 18; 2 Bl. R. 1259; 1 T. R. 760, n.; 3 T. R. 14; 6 T. R. 62; 4 Munf. 124; 6 Esp. R. 20; 2 Ves. 236; 2 Camp. R. 844; 1 Stark. R. 192. And see, in general, 10 Vin. Abr. 420, tit. Estoppel; Bac. Abr. Pleas, 111; Com. Dig. Estoppel; Id. Pleader, S 5; Arch. Civ. Pl. 218; Doct. Pl. 255; Stark. Ev. pt. 2, p. 206, 302; pt. 4, p. 30; 2 Smith's Lead. Cas. 417−460. Vide Term.

ESTOVERS, estates. The right of taking necessary wood for the use or furniture of a house or farm, from off another's estate. The word bote is used synonymously with the word estovers. 2 Bl. Com. 35; Dane's Ab. Index, h. t.; Woodf. L. & T. 232; 10 Wend. 639; 2 Bouv. Inst. n. 1652 57.

ESTRAYS. Cattle whose owner is unknown.

2. In the United States, generally, it is presumed by local regulations, they are subject to, being sold for the benefit of the poor, of some other public use, of the place where found.

ESTREAT. This term is used to signify a true copy or note of some original writing or record, and specially of flues and amercements imposed by a court, and extracted from the record, and certified to a proper officer or officers authorized and required to collect them. Vide F. N. B. 57, 76.

ESTREPE. This word is derived from the French, estropier, to cripple. It signifies an injury to lands, to the damage of another, as a reversioner. This is prevented by a writ of estrepemeut.

ESTREPEMENT. The name of a writ which lay at common law to prevent a party in possession from committing waste on an estate, the title to which is disputed, after judgment obtained in any real action, and before possession was delivered by the sheriff.

2. But as waste might be committed in some cases, pending the suit, the statute of Gloucester gave another writ of estrepement pendente placito, commanding the sheriff firmly to inhibit the tenant "ne faciat vastum vel strepementum pendente placito dicto indiscusso." By virtue of either of these writs, the sheriff may resist those who commit waste or offer to do so; and he may use sufficient force for the purpose. 3 Bl. Com. 225, 226.

3. This writ is sometimes directed to the sheriff and the party in possession of the lands, in order to make him amenable to the court as for a contempt in case of his disobedience to the injunction of the writ. At common law the process proper to bring the tenant into court is a venire facias, and thereon an attachment. Upon the defendant's coming in, the plaintiff declares against him. The defendant usually pleads "that he has done no waste contrary to the prohibition of the writ." The issue on this plea is tried by a jury, and in case they find against the defendant, they assess damages which the plaintiff recovers. But as this verdict convicts the defendant of a contempt, the court proceed against him for that cause as in other cases. 2 Co. Inst. 329; Rast. Ent. 317; Brev. Judic. 88; More's Rep. 100; 1 Bos. & Pull. 121; 2 Lilly's Reg. tit. Estrepement; 5 Rep. 119; Reg. Brev. 76, 77.

4. In Pennsylvania, by legislative enactment, the remedy by estrepement is extended for the benefit of any owner of lands leased for years or at will, at any time during the continuance or after the expiration of such demise, and due notice given to the tenant to leave the same, agreeably to law, or for any purchaser at sheriff or coroner's sale of lands. &c., after he has been declared the highest bidder by the sheriff or coroner; or for any mortgagee or judgment creditor, after the lands bound by such judgment or mortgage, shall have been condemned by inquisition, or which may be subject to be sold by a writ of venditioni exponas or levari facias. Vide 10 Vin. Ab.

497; Woodf. Landl. & Ten, 447; Archb. Civ. Pl. 17; 7 Com. Dig. 659.

ET CETERA. A Latin phrase, which has been adopted into English; it signifies. "and the others, and so of the rest," it is commonly abbreviated, &c.

2. Formerly the pleader was required to be very particular in making his defence. (q. v.) B making full defence, he impliedly admitted the jurisdiction of the court, and the competency of the plaintiff to sue; and half defence was used when the defendant intended to plead to the jurisdictions or disability. To prevent the inconveniences which might arise by pleading full or half defence, it became the practice to plead in the following form: " And the said C D, by E F, his attorney, comes and defends the wrong and injury, when, &c., and says," which was either full or half defence. 2 Saund. 209, c.; Steph. Pl. 432; 2 Chit. Pl. 455.

3. In practice, the &c. is used to supply the place of words which have been omitted. In taking recognizance, for example, it is usual to make an entry on the docket of the clerk of the court, as follows: A B, tent, &c., in the sum of $1000, to answer, &c. 6 S. & R. 427.

ET NON. And not. These words are sometimes employed in pleading to convey a pointed denial. They have the same effect as without this, absque hoe. 3 Bouv. Inst. n. 2981, note.

EUNDO MORANDO, ET REDEUNDO. This Latin phrase signifies going, remaining, and returning. It is employed in cases where a person either as a party, a witness, or one acting in some other capacity, as an elector, is privileged from arrest, in order to give him that freedom necessary to the performance of his respective obligations, to signify that he is protected from arrest eundo, morando et redeundo. See 3 Bouv. Inst. n. 3380.

EUNOMY. Equal laws, and a well adjusted constitution of government.

EUNUCH. A male whose organs of generation have been so far removed or disorganized, that he is rendered incapable of reproducing his species. Domat, Lois Civ. liv. prel. tit. 2, s. 1, n. 10.

EVASION. A subtle device to set aside the truth, or escape the punishment of the law; as if a man should tempt another to strike him first, in order that he might have an opportunity of returning the blow with impunity. He is nevertheless punishable, because he becomes himself the aggressor in such a case. Wishard, 1 H. P . C. 81 Hawk. P. C. c. 31, _24, 25; Bac. Ab. Fraud, A.

2. An escape from custody.

EVICTION. The loss or deprivation which the possessor of a thing suffers, either in whole or in part, of his right of property in such a thing, in consequence of the right of a third person established before a compenent tribunal. 10 Rep. 128; 4 Kent, Com. 475−7; 3 Id. 464−5.

2. The eviction may be total or partial. It is total, when the possessor is wholly deprived of his rights in the whole thing; partial, when he is deprived of only a portion of the thing; as, if he had fifty acres of land, and a third person recovers by a better title twenty−five; or, of some right in relation to the thing. as, if a stranger should claim and establish a right to some easement over the same. When the grantee suffers a total eviction, and he has a covenant of seisin, he recovers from the seller, the consideration money, with interest and costs, and no more. The grantor has no concern with the future rise or fall of the property, nor with the improvements made by the purchaser. This seems to be the general rule in the United States. 3 Caines' R. 111; 4 John. R. 1; 13 Johns. R. 50; 4 Dall. R. 441; Cooke's Term. R. 447; 1 Harr. & Munf. 202; 5 Munf. R. 415; 4 Halst. R. 139; 2 Bibb, R. 272. In Massachusetts, the measure of damages on a covenant of warranty, is the value of the land at the time of eviction. 3 Mass. R. 523; 4 Mass. R. 108. See, as to other states, 1 Bay, R. 19, 265; 3 Des. Eq. R. 245; 2 Const. R. 584; 2 McCord's R. 413; 3 Call's R. 326.

3. When the eviction is only partial the damages to be recovered under the covenant of seisin, are a rateable part of the original price, and they are to bear the same ratio to the whole consideration, that the value of land to which the title has failed, bears to the value of the whole tract. The contract is not rescinded, so as to entitle the vendee to the whole consideration money, but only to the amount of the relative value of the part lost. 5 Johns. R. 49; 12 Johns. R. 126; Civ. Code of Lo. 2490; 4 Kent's Com. 462. Vide 6 Bac. Ab. 44; 1 Saund. R. 204: note 2, and 322 a, note 2; 1 Bouv. Inst. n. 656.

EVIDENCE. That which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue; 3 Bl. Com. 367; or it is whatever is exhibited to a court or jury, whether it be by matter of record, or writing, or by the testimony of witnesses, in order to enable them to pronounce with certainty; concerning the truth of any matter in dispute; Bac. Ab. Evidence, in pr.; or it is that which is legally submitted to a jury, to enable them to decide upon the questions in dispute or issue, as pointed out by the pleadings and distinguished from all comment or argument. 1 Stark. Ev. 8.

2. Evidence may be considered with reference to, 1. The nature of the evidence. 2. The object of the evidence. 3. The instruments of evidence. 4. The effect of evidence. 1. As to its nature, evidence may be considered with reference to its being 1. Primary evidence. 2. Secondary evidence. 3. Positive. 4. Presumptive. 5. Hearsay. 6. Admissions.

4. − 1. Primary evidence. The law generally requires that the best evidence the case admits of should be given; B. N. P. 293; 1 Stark. Ev. 102, 390; for example, when a written contract has been entered into, and the object is to prove what it was, it is requisite to produce the original writing if it is to be attained, and in that case no copy or other inferior evidence will be received.

5. To this general rule there are several exceptions. 1. As it refers to the quality rather than to the quantity of evidence, it is evident that the fullest proof that every case admits of, is not requisite; if, therefore, there are several eye−witnesses to a fact, it may be sufficiently proved by one only.

2. It is not always requisite, when the matter to be proved has been reduced to writing, that the writing should be produced; as, if the narrative of a fact to be proved has been committed to writing, it may yet be proved by parol evidence. A receipt for the payment of money, for example, will not exclude parol evidence of payment. 14 Esp. R. 213; and see 7 B. & C. 611; S. C. 14 E. C. L. R. 101; 1 Campb. R. 439; 3 B. & A. 566; 6 E. C. L. R. 377.

6. − 2. Secondary evidence. That species of proof which is admissible on the loss of primary evidence, and which becomes by that event the best evidence. 3 Yeates, Rep. 530.

7. It is a rule that the best evidence, or that proof which most certainly exhibits the true state of facts to which it relates, shall be required, and the law rejects secondary or inferior evidence, when it is attempted to be substituted for evidence of a higher or superior nature. This is a rule of policy, grounded upon a reasonable suspicion, that the substitution of inferior for better evidence arises from sinister motives; and an apprehension that the best evidence, if produced, would alter the case to the prejudice of the party. This rule relates not to the measure and quantity of evidence, but to its quality when compared with some other evidence of superior degree. It is not necessary in point of law, to give the fullest proof that every case may admit of. If, for example, there be several eye witnesses to a fact, it may be proved by the testimony of one only.

8. When primary evidence cannot be had, then secondary evidence will be admitted, because then it is the best. But before such evidence can be allowed, it must be clearly made to appear that the superior evidence is not to be had. The person who possesses it must be applied to, whether he be a stranger or the opposite party; in the case of a stranger, a subpoena and attachment, when proper, must be taken out and served; and, in the case of a party, notice to produce such primary evidence must be proved before the secondary evidence will be admitted. 7 Serg. & Rawle, 116; 6 Binn. 228; 4 Binn. R. 295, note; 6 Binn. R. 478; 7 East, R. 66; 8 East, R. 278 3 B. & A. 296; S. C. 5 E. C. L. R. 291.

9. After proof of the due execution of the original, the contents should be proved by a counterpart, if there be one, for this is the next best evidence; and it seems that no evidence of a mere copy is admissible until proof has been given that the counterpart cannot be produced. 6 T. R. 236. If there be no counterpart, a copy may be proved in evidence. by any witness who knows that it is a copy, from having compared it with the original. Bull. N. P. 254; 1 Keb. 117; 6 Binn. R. 234; 2 Taunt. R. 52; 1 Campb. R. 469 8 Mass. R. 273. If there be no copy, the party may produce an abstract, or even give parol evidence of the contents of a deed. 10 Mod. 8; 6 T. R. 556.

10. But it has been decided that there are no degrees in secondary evidence: and when a party has laid the foundation for such evidence, he may prove the contents of a deed by parol, although it appear that an attested copy is in existence. 6 C. & P. 206; 8 Id. 389.

11. − 3. Positive or direct evidence is that which, if believed, establishes the truth of a fact in issue, and does not arise from any presumption. Evidence is direct and positive, when the very facts in dispute are communicated by those who have the actual knowledge of them by means of their senses. 1 Phil. Ev. 116 1 Stark. 19. In one sense, there is but little direct or positive proof, or such proof as is acquired by means of one's own sense, all other evidence is presumptive but, in common acceptation, direct and positive evidence is that which is communicated by one who has actual knowledge of the fact.

12. − 4. Presumptive evidence is that which is not direct, but where, on the contrary, a fact which is not positively known, is presumed or inferred from one or more other facts or circumstances which are known. Vide article Presumption, and Rosc. Civ. Ev. 13; 1 Stark. Ev. 18.

13. − 5. Hearsay, is the evidence of those who relate, not what they know themselves, but what they have heard from others.

14. Such mere recitals or assertions cannot be received in evidence, for many reasons, but principally for the following: first, that the party making such declarations is not on oath and, secondly, because the party against whom it operates, has no opportunity of cross−examination. 1 Phil. Ev. 185. See, for other reasons, 1 Stark. Ev. pt. 1, p. 44. The general rule excluding hearsay evidence, does not apply to those declarations to which the party is privy, or to admissions which he himself has made. See Admissions.

15. Many facts, from their very nature, either absolutely, or usually exclude direct evidence to prove them, being such as are either necessarily or usually, imperceptible by the senses, and therefore incapable of the ordinary means of proof. These are questions of pedigree or relationship, character, prescription, custom, boundary, and the like; as also questions which depend upon the exercise of particular skill and judgment. Such facts, some from their nature, and others from their antiquity, do not admit of the ordinary and direct means of proof by living witnesses; and, consequently, resort must be had to the best means of proof which the nature of the cases afford. See Boundary; Custom; Opinion; Pedigree; Prescription.

16. − 6. Admissions are the declarations which a party by himself, or those who act under his authority, make of the existence of certain facts. Vide Admissions.

17.− _2. The object of evidence is next to be considered. It is to ascertain the truth between the parties. It has been discovered by experience that this is done most certainly by the adoption of the following rules, which are now binding as law: 1. The evidence must be confined to the point in issue. 2. The substance of the issue must be proved, but only the substance is required to be proved. 3. The affirmative of the issue must be proved.

18. − 1. It is a general rule, both in civil and criminal cases, that the evidence shall be confined to the point in issue. Justice and convenience require the observance of this rule, particularly in criminal cases, for when a prisoner is charged with an offence, it is of the utmost importance to him that the facts laid before the jury should consist exclusively of the transaction, which forms the subject of the indictment, and, which alone he has come prepared to answer. 2 Russ. on Cr. 694; 1 Phil. Ev. 166.

19. To this general rule, there are several exceptions, and a variety of cases which do not fall within the rule. 1. In general, evidence of collateral facts is not admissible; but when such a fact is material to the issue joined between the parties, it may be given in evidence; as, for example, in order to prove that the acceptor of a bill knew the payee to be a fictitious person; or that the drawer had general authority from him to fill up bills with the name of a fictitious payee, evidence may be given to show that he had accepted similar bills before they could, from their date, have arrived from the place of date. 2 H. Bl. 288.

20. − 2. When special damage sustained by the plaintiff is not stated in the declaration, it is Dot one of the points in issue, and therefore, evidence of it cannot be received; yet a damage which is the necessary result of the defendant's breach of contract, may be proved, notwithstanding it is not in the declaration. 11 Price's Reports, 19.

21. − 3. In general, evidence of the character of either party to a suit is inadmissible, yet in some cases such evidence may be given. Vide article Cha?−acter.

22. − 4. When evidence incidentally applies to another person or thing not included in the transaction in question, and with regard to whom or to which it is inadmissible; yet if it bear upon the point in issue, it will be re−ceived. 8 Bingh. Rep. 376; S. C. 21 Eng. C. L. R. 325 and see 1 Phil. Ev. 158; 2 East, P. C. 1035; 2 Leach, 985; S. C. 1 New Rep. 92; Russ. & Ry. C. C. 376; 2 Yeates, 114; 9 Conn. Rep. 47.

23. − 5. The acts of others, as in the case of conspirators, may be given in evidence against the prisoner, when referable to the issue; but confessions made by one of several conspirators after the offence has been completed, and when the conspirators no longer act in concert) cannot be received. Vide article Confession, and 10 Pick. 497; 2 Pet. Rep. 364; 2 Brec. R. 269; 3 Serg. & Rawle, 9; 1 Rawle, 362, 458; 2 Leigh's R. 745; 2 Day's Cas. 205; 3 Serg. & Rawle, 220; 3 Pick. 33; 4 Cranch, 75; 2 B. & A. 573−4 S. C. 5. E. C. L. R. 381.

24. − 6. In criminal cases, when the offence is a cumulative one, consisting itself in the commission of a number of acts, evidence of those acts is not only admissible, but essential to support the charge. On an indictment against a defendant for a conspiracy, to cause himself, to be believed a man of large property, for the purpose of defrauding tradesmen after proof of a representation to one tradesman, evidence may therefore be given of a representation to another tradesman at a different time. 1 Campb. Rep. 399; 2 Day's Cas. 205; 1 John. R. 99; 4 Rogers' Rec. 143; 2 Johns. Cas. 193.

25. − 7. To prove the guilty knowledge of a prisoner, with regard to the transaction in question, evidence of other offences of the same kind, committed by the prisoner, though not charged in the indictment, is admissible against him. As in the case where a prisoner had passed a counterfeit dollar, evidence that he had. other counterfeit dollars

in his possession is evidence to prove the guilty knowledge. 2 Const. R. 758; Id. 776; 1 Bailey, R. 300; 2 Leigh's R. 745; 1 Wheeler's Cr. Cas. 415; 3 Rogers' Rec. 148; Russ. & Ry. 132; 1 Campb. Rep. 324; 5 Randolph's R. 701.

26. − 2. The substance of the issue joined between the parties must be proved. 1 Phil. Ev. 190. Under this rule will be considered the quantity of evidence required to support particular averments in the declaration or indictment.

27. And, first, of civil cases. 1. It is a fatal variance in a contract, if it appear that a party who ought to have been joined as plaintiff has been omitted. 1 Sauud. 291 b, n.; 2 T. R. 282. But it is no variance to omit a person who might have been joined as defendant, because the non−joinder ought to have been pleaded in abatement. 1 Saund. 291 d, n. 2. The consideration of the contract must be proved but it is not necessary for the plaintiff to set out in his declaration, or prove on the trial, the several parts of a contract consisting of distinct and collateral provisions; it is sufficient to state so much of the contract as contains the entire consideration of the act, and the entire act to be done in virtue of such consideration, including the time, manner, and other circumstances of its performance. 6 East, R. 568; 4 B. & A. 387; 6 E. C. L. R. 455.

28. − Secondly. In criminal cases, it may be laid down, 1. That it is, in general, sufficient to prove what constitutes an offence. It is enough to prove so much of the indictment as shows that the defendant has committed a substantive crime therein specified. 2 Campb. R. 585; 1 Harr. & John. 427. If a man be indicted for robbery, he may be found guilty of larceny, and not guilty of the robbery. 2 Hale, P. C. 302. The offence of which the party is convicted, must, however, be of the same class with that of which he is charged. 1 i Leach, 14; 2 Stra. 1133.

29. − 2. When the intent of the prisoner furnishes one of the ingredients in the offence, and several intents are laid in the indictment, each of which, together with the act done, constitutes an offence, it is sufficient to prove one intent only. 3 Stark. R. 35; 14 E. C. L. R. 154, 163.

30. − 3. When a person or thing, necessary to be mentioned in an indictment, is described with circumstances of greater particularity than is requisite, yet those circumstances must be proved. 3 Rogers' Rec. 77; 3 Day's Cas. 283. For example, if a party be charged with stealing a black horse, the evidence must correspond with the averment, although it was unnecessary to make it. Roscoe's Cr. Ev. 77 4 Ohio, 350.

31. − 4. The name of the prosecutor, or party injured; must be proved as laid, and the rule is the same with reference to the name of a third person introduced into the indictment, as. descriptive of some person or thing.

32. − 5. The affirmative of the issue must be proved. The general rule with regard to the burthen of proving the issue, requires that the party who asserts the, affirmative should prove it. But this rule ceases to operate the moment the presumption of law is thrown into the other scale. When the issue is on the legitimacy of a child therefore, it is incumbent on the party asserting the illegitimacy to prove it. 2 Selw. N. P. 709. Vide Onus Probandi; Presum 2 Gall. R. 485 and 1 McCord, 573.

33. − _3. The consideration of the instruments of evidence will be the subject of this head. These consist of records, private writings, or witnesses.

34. − 1. Records are to be proved by an exemplification, duly authenticated, (Vide Authentication, in all cases where the issue is nul tiel record. In other cases, an examined copy, duly proved, will, in general, be evidence. Foreign laws as proved in the mode pointed out under the article Foreign laws.

35. − 2. Private writings are proved by producing the attesting witness; or in case of his death, absence, or other legal inability to testify, as if, after attesting the paper, he becomes infamous, his handwriting may be proved. When there is no witness to the instrument, it may be proved by the evidence of the handwriting of the party, by a person who has seen him write, or in a course of correspondence has become acquainted with his hand. See Comparison of handwriting, and 5 Binn. R. 349; 10 Serg. & Rawle, 110; 11 Serg. & Rawle, 333 3 W. C. C. R. 31; 11 Serg. & Rawle, 347 6 Serg. & Rawle, 12, 812; 1 Rawle, R. 223; 3 Rawle, R. 312; 1 Ashm. R. 8; 3 Penn. R. 136.

36. Books of original entry, when duly proved, are prima facie evidence of goods sold and delivered, and of work and labor done. Vide original entry.

37. − 3. Proof by witnesses. The testimony of witnesses is called parol evidence, or that which is given viva voce, as contra−distinguished from that which is written or documentary. It is a general rule, that oral evidence shall in no case be received as equivalent to, or as a substitute for, a written instrument, where the latter is required by law; or to give effect to a written instrument which is defective in any particular which by law is essential to its validity; or to contradict, alter or vary a written instrument, either appointed by law, or by the

contract of the parties, to be the appropriate and authentic memorial of the particular facts it recites; for by doing so, oral testimony would be admitted to usurp the place of evidence decidedly superior in degree. 1 Serg. & Rawle, 464; Id. 27; Addis. R. 361; 2 Dall. 172; 1 Yeates, 140; 1 Binn. 616; 3 Marsh. Ken. R. 333; 4 Bibb, R. 473; 1 Bibb, R. 271; 11 Mass. R. 30; 13 Mass. R. 443; 3 Conn. 9; 20 Johns. 49; 12 Johns. R. 77; 3 Camp. 57; 1 Esp. C. 53; 1 M. & S. 21; Bunb. 175.

38. But parol evidence is admissible to defeat a written instrument, on the ground of fraud, mistake, &c., or to apply it to its proper subject matter; or, in some instances, as ancillary to such application, to explain the meaning of doubtful terms, or to rebut presumptions arising extrinsically. In these cases, the parol evidence does not usurp the place, or arrogate the authority of, written evidence, but either shows that the instrument ought not to be allowed to operate at all, or is essential in order to give to the instrument its legal effect. 1 Murph. R. 426 4 Desaus. R. 211; 1 Desaus. R. 345 1 Bay, R. 247; 1 Bibb, R. 271 11 Mass. R. 30; see 1 Pet. C. C. R. 85 1 Binn. R. 610; 3 Binn. R. 587: 3 Serg. Rawle, 340; Poth. Obl. Pl. 4, c. 2.

39. − _4. The effect of evidence. Under this head will be considered, 1st. The effect of judgments rendered in the United States, and of records lawfully made in this country; and, 2d. The effect of foreign judgments and laws.

40. − 1. As a general rule, a judgment rendered by a court of competent jurisdiction, directly upon the point in issue, is a bar between the same parties: 1 Phil. Ev. 242; and privies in blood, as an heir 3 Mod. 141; or privies in estate 1 Ld. Raym. 730; B. N. P. 232; stand in the same situation. as those they represent; the verdict and judgment may be used for or against them, and is conclusive. Vide Res Judicata.

41. The Constitution of the United States, art. 4, s. 1, declares, that "Full faith and credit shall be given, in each state, to the public acts, records, and judicial proceedings of every other state. And congress may, by general laws, prescribe the manner in which Such acts, records and proceedings, shall be proved, and the effect thereof." Vide article Authentication and 7 Cranch, 481; 3 Wheat. R. 234 10 Wheat. R. 469; 17 Mass. R. 546; 9 Cranch, 192; 2 Yeates, 532; 7 Cranch, 408; 3 Bibb's R. 369; 5 Day's R. 563; 2 Marsh. Kty. R. 293.

42. − 2. As to the effect of foreign laws, see article Foreign Laws. For the force and effect of foreign judgments, see article Foreign Judgments. Vide, generally, the Treatises on Evidence, of Gilbert, Phillips, Starkie, Roscoe, Swift, Bentham, Macnally, Peake, Greenleaf, and Bouv. Inst. Index, h. t.; the various Digests, h. t.

EVIDENCE, CIRCUMSTANTIAL. The proof of facts which usually attend other facts sought to be, proved; that which is not direct evidence. For example, when a witness testifies that a man was stabbed with a knife, and that a piece of the blade was found in the wound, and it is found to fit exactly with another part of the blade found in the possession of the prisoner; the facts are directly attested, but they only prove circumstances, and hence this is called circumstantial evidence.

2. Circumstantial evidence is of two kinds, namely, certain and uncertain. It is certain when the conclusion in question necessarily follows as, where a man had received a mortal wound, and it was found that the impression of a bloody left hand had been made on the left arm of the deceased, it was certain some other person than the deceased must have made such mark. 14 How. St. Tr. 1324. But it is uncertain whether the death was caused by suicide or by murder, and whether the mark of the bloody hand was made by the assassin, or by a friendly hand that came too late to the relief of the deceased. Id. Vide Circumstances.

EVIDENCE, CONCLUSIVE. That which, while uncontradicted, satisfies the judge and jury it is also that which cannot be contradicted.

2. The record of a court of common law jurisdiction is conclusive as to the facts therein stated. 2 Wash. 64; 2 H. 55; 6 Conn. 508, But the judgment and record of a prize court is not conclusive evidence in the state courts, unless it had jurisdiction of the subject−matter; and whether it had or not, the state courts may decide. 1 Conn. 429. See as to the conclusiveness of the judgments of foreign courts of admiralty, 4 Cranch, 421, 434; 3 Cranch, 458; Gilmer, 16 Const. R. 381 1 N. & M. 5 3 7.

EVIDENCE, DIRECT. That which applies immediately to the fadum probandum, without any intervening process; as, if A testifies he saw B inflict a mortal wound on C, of which he, instantly died. 1 Greenl. Ev. _13.

EVIDENCE, EXTRINSIC. External evidence, or that which is not contained in the body of an agreement, contract, and the like.

2. It is a general rule that extrinsic evidence cannot be admitted to contradict, explain, vary or change the terms of a contract or of a will, except in a latent ambiguity, or to rebut a resulting trust. 14 John. 1; 1 Day, R. 8; 6 Conn. 270.

EVOCATION, French law. The act by which a judge is deprived of the cognizance of a suit over which he had

jurisdiction, for the purpose of conferring on other judges the power of deciding it. This is done with us by writ of certiorari.

EWAGE. A toll paid for water passage. Cowell. The same as aquagium. (q. v.)

EX CONTRACTU. This term is applied to such things as arise from a contract; as an action which arises ex contractu. Vide Action.

EX DELICTO. Those actions which arise in consequence of a crime, misdemeanor, fault, or tort; actions arising ex delicto are case, replevin, trespass, trover. See Action.

EX DOLO MALO. Out of fraud or deceit. When a cause of action arises from fraud or deceit, it cannot be supported: Ex dolo malo, non oritur actio.

EX AEQUO ET BONO. In equity and good conscience. A man is bound to pay money which ex oequo et bono he holds for the use of another.

EX MERO MOTU. Mere motion of a party's own free will. To prevent injustice, the courts will, ex mero motu, make rules and orders which the parties would not strictly be entitled to ask for.

EX MORA. From the delay; from the default. All persons are bound to make amends for damages which arise from their own default.

EX NECESSITATE LEGIS. From the necessity of law.

EX NECESSITATE REI. From the necessity of the thing. Many acts may be done ex necessitate ret, which would not be justifiable without it; and sometimes property is protected, ex necessitate rei, which, under, other circumstances, would not be so. For example, property put upon the land of another from necessity, cannot be distrained for rent. See Distress; Necessity.

EX OFFICIO. By virtue of his office. 2. Many powers are granted and exercised by public officers which are not expressly delegated. A judge, for example, may, ex officio, be a conservator of the peace, and a justice of the peace.

EX PARTE. Of the one part. Many things may be done ex parte, when the opposite party has had notice; an affidavit or deposition is said to be taken ex parte when only one of the parties attends to taking the same. Ex parte paterna, on the side of the father, or property descended to a person from his father; ex parte materna, on the part of the mother.

EX POST FACTO, contracts, crim. law. This is a technical expression, which signifies, that something has been done after another thing, in relation to the latter.

2. An estate granted, may be made good or avoided by matter ex post facto, when an election is given to the party to accept or not to accept. 1 Co . 146.

3. The Constitution of the United States, art. 1, sec. 10, forbids the states to pass any ex post facto law; which has been defined to be one which renders the act punishable in a manner in which it was not punishable when it was committed. 6 Cranch, 138. This definition extends to laws passed after the act, and affecting a person by way of punishment of that act, either in his person or estate. 3 Dall. 386; 1 Blackf. Ind. R. 193 2 Pet. U. S. Rep. 413 1 Kent, Com. 408; Dane's Ab. Index, h. t.

4. This prohibition in the constitution against passing ex post facto law's, applies exclusively to criminal or penal cases, and not to civil cases. Serg. Const. Law, 356. Vide 2 Pick. R. 172; 11 Pick. R. 28; 2 Root, R. 350; 5 Monr. 133; 9 Mass. R. 363; 3 N. H. Rep. 475; 7 John. R. 488; 6 Binn. R. 271; 1 J. J. Marsh, 563; 2 Pet. R. 681; and the article Retrospective.

EX VI TERMINI. By force of the term; as a bond ex vi termini imports a sealed instrument.

EX VISITATIONE DEI. By or from the visitation of God. This phrase is frequently employed in inquisitions by the coroner, where it signifies that the death of the deceased is a natural one.

EX TEMPORE. From the time without premeditation.

EXACTION, torts. A willful wrong done by an officer, or by one who, under color of his office, takes more fee or pay for his services than what the law allows. Between extortion and exaction there is this difference; that in the former case the officer extorts more than his due, when something is due to him; in the latter, he exacts what is not his due, when there is nothing due to him. Wishard; Co. Litt. 368.

EXAMINATION, crim. law. By the common law no one is bound to accuse himself. Nemo tenetur prodere seipsum. In England, by the statutes of Philip and Mary, (1 & 2 P. & M. c. 13; 2 & 3 P. & M. c. 10,) the principles of which have been adopted in several of the United States, the justices before whom any person shall be brought, charged with any of the crimes therein mentioned, shall take the examination of the prisoner, as well is that of the

witnesses, in writing, which the magistrates shall subscribe, and deliver to the officer of the court where the trial is to be had. The signature of the prisoner, when not specially required by statute, is not indispensable, though it is proper to obtain it, when it can be obtained. 1 Chit. Cr. Law, 87; 2 Leach, Cr. Cas. 625.

2. It will be proper to consider, 1. The requisites of such examination. 2. How it is to be proved. 3. Its effects.

3. − 1. It is required that it should, 1st. Be voluntarily made, without any compulsion of any kind; and, 2d. It must be reduced to writing. 1st. The law is particularly solicitous to let the prisoner be free in making declarations in his examination; and if the prisoner has not been left entirely free, or did not consider himself to be so, or if he did not feel at liberty wholly to decline any explanation or declaration whatever, the examination is not considered voluntary, and the writing cannot be read in evidence against him, nor can parol evidence be received of what the prisoner said on the occasion. 5 C. & P. 812; 7 C. & P. 177; 1 Stark. R. 242; 6 Penn. Law Journ. 120. The prisoner, of course, cannot be sworn, and make his statement under oath. Bull. N. P. 242; 4 Hawk. P. C. book 2, c. 46, _37; 4 C. & P. 564. 2a. The statute requires that the examination shall be reduced to writing, or so much as may be material, and the law presumes the magistrate did his duty and took down all that was material. Joy on Conf. 89−92; 1 Greenl. Ev. _227. The prisoner need not sign the examination so reduced to writing, to give it validity; but, if being asked to sign it, he absolutely refuse, it will be considered incomplete. 2 Stark. R. 483; 2 Leach, Cr. Cas. 627, n.

4. − 2. The certificate of the magistrate is conclusive evidence of the manner in which the examination was conducted. 7 C. & P. 177; 9 C. & P. 124; 1 Stark. R. 242. Before it can be given in evidence, its identity must be proved, as well as the identity of the prisoner. When the prisoner has signed the examination, proof of his handwriting is sufficient evidence that he has read it; but if he has merely made his mark, or not signed it at all, the magistrate or clerk must identify the prisoner, and prove that the writing was duly read to him, and that he assented to it. l Greenl. Ev. _520; 1 M. & Rob. 395.

5. − 3. The effect of such an examination, when properly taken and proved, is sufficient to found a conviction. 1 Greenl. Ev. _216.

EXAMINATION, practice. The interrogation of a witness, in order to ascertain his knowledge as to the facts in dispute between parties. When the examination is made by the party who called the witness, it is called an examination in chief. When it is made by the other party, it is known by the name of cross−examination. (q. v.)

2. The examination is to be made in open court, when practicable; but when,: on account of age, sickness, or other cause, the witness cannot be so examined, then it may be made before authorized commissioners. In the examination in chief the counsel cannot ask leading questions, except in particular cases. Vide Cross−examination; Leading question.

3. The laws of the several states require the private examination of a feme covert before a competent officer, in order to pass her title to her own real estate or the interest she has in that of her hushand: as to the mode in which this is to be done, see Acknowledment. See, also, 3 Call, R. 394; 5 Mason’s R. 59; 1 Hill, R. 110; 4 Leigh, R. 498; 2 Gill & John. 1; 3 Rand. R. 468 1 Monr. R. 49; 3 Monr. R. 397; 1 Edw. R. 572; 3 Yerg. R. 548 1 Yerg. R. 413 3 J. J. Marsh. R. 241 2 A. K. Marsh. R. 67; 6 Wend. R. 9; 1 Dall. 11, 17; 3 Yeates, R. 471; 8 S. & R. 299; 4 S. & R. 273.

EXAMINED COPY. This phrase is applied to designate a paper which is a copy of a record, public book, or register, and which has been compared with the original. 1 Campb. 469.

2. Such examined copy is admitted in evidence, because of the public inconvenience which would arise, if such record, public book, or register, were removed from place to place, and because any fraud or mistake made in the examined copy would be so easily, detected. 1 Greenl. Ev. _91; 1 Stark. Ev. 189−191. But an answer in chancery, on which the defendant was indicted for perjury, or where the original must be produced in order to identify the party by proof of handwriting, an examined copy would not be evidence. 1 M. & Rob. 189. Vide Copy.

EXAMINERS, practice. Persons appointed to question students of law, in order to ascertain their qualifications before they are admitted to practice. Officers in the courts of chancery whose duty it is to examine witnesses, are also called examiners. Com. Dig. Chancery, P 1. For rules as to the mode of taking examinations, see Gresl. Eq. Ev. pt. 1, c, 3, s. 2.

EXAMPLE. An example is a case put to illustrate a. principle. Examples illustrate, but do not restrain or change the laws: illustrant non restringunt legem. Co. Litt. 24, a.

EXCAMBIATOR. The name of an exchanger of lands; a broker. This term is now obsolete.

EXCAMBIUM. Exchange. (q. v.)

EXCEPTIO REI JUDICATAE, civil law. The name of a plea by which the defendant alleges that the matter in dispute between the parties has been before adjudged. See Res judicata.

EXCEPTION, Eng. Eq. practice. Re−interrogation. 2 Benth. Ev. 208, n.

EXCEPTION, legislation, construction. Exceptions are rules which limit the extent of other more general rules, and render that just and proper, which would be, on account of its generality, unjust and improper. For example, it is a general rule that parties competent may make contracts; the rule that they shall not make any contrary to equity, or contra bonos mores, is the exception.

EXCEPTION, contracts. An exception is a clause in a deed,. by which the lessor excepts something out of that which he granted before by the deed.

2. To make a valid exception, these things must concur: 1. The exception must be by apt words; as, saving and excepting, &c. 2. It must be of part of the thing previously described, and not of some other thing. 3. It must be part of the thing only, and not of all, the greater part, or the effect of the thing granted; an exception, therefore, in a lease, which extends to the whole thing demised, is void. 4. It must be of such thing as is severable from the demised premises, and hot of an inseparable incident. 5. It must be of a thing as he that accepts may have, and which properly belongs to him. 6. It must be of a particular thing out of a general, and not of a particular thing out of a particular thing. 7. It must be particularly described and set forth; a lease of a tract of land, except one acre, would be void, because that acre was not particularly described. Woodf. Landl. and Ten. 10; Co. Litt. 47 a; Touchs. 77; 1 Shepl. R. 337; Wright's R. 711; 3 John. R., 375 8 Conn. R. 369; 6 Pick. R. 499; 6 N. H. Rep. 421. Exceptions against common right and general rules are construed as strictly as possible. 1 Barton's Elem. Conv. 68.

3. An exception differs from a reservation; the former is always a part of the thing granted; the latter is of a thing not in esse but newly created or reserved. An exception differs also from an explanation, which by the use of a videlicet, proviso, &c., is allowed only to explain doubtful clauses precedent, or to separate and distribute generals, into particulars. 3 Pick. R. 272.

EXCEPTION, practice, pleading. This term is used in the civil, nearly in the same sense that the word plea has in the common law. Merl. Repert. h. t.; Ayl. Parerg. 251.

2. In chancery practice, it is the allegation of a party in writing, that some pleading or proceeding in a cause is insufficient. 1 Harr. Ch. Pr. 228.

3. Exceptions are dilatory or peremptory. Bract. lib. 5, tr. 5; Britton, cap. 91, 92; 1 Lilly's Ab. 559. Dilatory exceptions are such as do not tend to defeat the action, but only to retard its progress. Poth. Proc. civ. partie 1, c. 2, s. 2, art. 1; Code of Pract. of Lo. art. 332. Declinatory exceptions have this effect, as well as the exception of discussion opposed by a third possessor, or by a surety in an hypothecary action, or the exception taken in order to call in the warrantor. Id.; 7 N. S. 282; 1 L. R. 38, 420. These exceptions must, in general, be pleaded in limine litis before issue joined. Civ. Code of Lo. 2260; 1 N. S. 703; 2 N. S. 389; 4 L. R. 104; 10 L. R. 546. A declinatory exception is a species of dilatory exception, which merely declines the jurisdiction of the judge before whom the action is brought. Code of Pr. of L. 334.

4. Peremptory exceptions are those which tend to the dismissal of the action. Some relate to forms, others arise from the law. Those which relate to formes, tend to have the cause dismissed, owing to some nullities in the proceedings. These must be pleaded in limine litis. Peremptory exceptions founded on law, are those which, without going into the merits of the cause, show that the plaintiff cannot maintain his action, either because it is prescribed, or because the cause of action has been destroyed or extinguished. These may be pleaded at any time previous to definitive judgment. Id. art. 343, 346; Poth. Proc. Civ. partie 1, c. 2, s. 1, 2, 3. These, in the French law, are called Fins de. non recevoir. (q. v.)

5. By exception is also meant the objection which is made to the decision of a judge in the course of a trial. See Bill of Exception.

EXCHANGE, com. law. This word has several significations.

2. − 1. Exchange is a negotiation by which one person transfers to another funds which he has in a certain place, either at a price agreed upon, or which is fixed by commercial usage. This transfer is made by means of an instrument which represents such funds, and is well known by the name of a bill of exchange.

3. − 2. The price which is paid in order to obtain such transfer, is also known among merchants by the name of exchange; as, exchange on England is five per cent. See 4 Wash. C. C. R. 307. Exchange on foreign money is to be calculated according to the usual rate at the time of trial. 5 S. & R. 48.

4. − 3. Barter, (q. v.) or the transfer of goods and chattels for other goods and chattels, is also known by the name of exchange, though the term barter is more commonly used.

5. − 4. The French writers on commercial law, denominate the profit which arises from a maritime loan, exchange, when such profit is a per centage on the money lent, considering it in the light of money lent in one place to be returned in another, with a difference in amount in the sum borrowed and that paid, arising from the difference of time and place. Hall on Mar. Loans, 56, n.; and the articles Interest; Maritime; Premium.

6. − 5. By exchange is also meant, the place where merchants, captains of vessels, exchange agents and brokers, assemble to transact their business. Code de Comm. art. 71.

7. − 6. According to the Civil Code of Louisiana, art. 1758, exchange imports a reciprocal contract, by which. the parties enter into mutual agreement. 14 Pet. 133. Vide the articles. Bills of Exchange; Damages on Bills of Exchange and Reexchange. Also Civ. Code of Lo. art. 2630.

EXCHANGE conveyancing. An exchange is a mutual grant of equal interests in land, the one in consideration of the other. 2 Bl. Com. 323; Litt. s. 62; Touchs. 289; Watk. Prin. Con. It is said that exchange, in the United States, does not differ from bargain and sale. 2 Bouv. Inst. n. 2055.

2. There are five circumstances necessary to an exchange. 1. That the estates given be equal. 2. That the word escambium or exchange be used, which cannot be supplied by any other word, or described by circumlocution. 3. That there be an execution by entry or claim in the life of the parties. 4. That if it be of things which lie in grant, it be by deed. 5. That if the lands lie in several counties, it be by deed indented; or if the thing lie in grant, though they be in one county. In practice this mode of conveyancing is nearly obsolete. Vide Cruise, Dig. tit. 32 Perk. ch. 4 10 Vin. Ab. 125; Com. Dig. h. t.; Nels. Ab. h. t.; Co. Litt. 51; Hardin's R. 593 1 N. H. Rep. 65 3 Har. & John. 361; 1 Rolle's Ab. 813 .3 Wils. R. 489. Vide Watk. Prin. Con. b. 2, c. 5; Horsman, 362 and 3 Wood, 243, for forms.

EXCHEQUER R, Eng. law. An ancient court of record set up by William the Conqueror. It is called exchequer from the chequered cloth, resembling a chesshoard, which covers the table there. 3 Bl. Com. 45. It consists of two divisions; the receipt of the exchequer, which manages the royal revenue; and the court, or judicial part of it, which is again divided into a court of equity, and a court of common law. Id. 44.

2. In this court all personal actions may be brought, and suits in equity commenced, the plaintiff in both (fictitiously for the most part) alleging himself to be the king's debtor, in order to give the court jurisdiction of the cause. Wooddes. Lect. 69. But by stat. 2 Will. IV. c. 39, s. 1, a change has been made in this respect.

EXCHEQUER CHAMBER, Eng. law. A court erected by statute 31 Ed. III. c. 12, to determine causes upon writs of error from the common law side of the court of exchequer. 3 Bl. Com. 55. Another court of exchequer chamber was created by the stat. 27 El. c. 8, consisting of the justices of the common bench, and the barons of the exchequer. It has authority to examine by writ of err6r the proceedings of the king's bench, not so generally as that erected by the statute of Edw. III., but in certain enumerated actions.

EXCISES. This word is used to signify an inland imposition, paid sometimes upon the consumption of the commodity, and frequently upon the retail sale. 1 Bl. Com. 318; 1 Tuck. Bl. Com. Appx. 341; Story, Const. _950.

EXCLUSIVE, rights. Debarring one from participating in a thing. An exclusive right or privilege, is one granted to a person to do a thing, and forbidding all others to do the same. A patent right or copyright, are of this kind.

EXCLUSIVE, computation of time. Shut out; not included. As when an act is to be done within a certain time, as ten days from a particular time, one day is to be included and the other excluded. Vide Hob. 139; Cowp. 714; Lofft, 276; Dougl. 463; 2 Mod. 280; Sav. 124; 3]Penna. Rep. 200; 1 Serg. & Rawle, 43; 3 B. & A. 581; Com. Dig. Temps, A; 3 East, 407; Com. Dig. Estates, G 8; 2 Chit. Pr. 69, 147.

EXCOMMUNICATION, eccl. law. An ecclesiastical sentence, pronounced by a spiritual judge against a Christian man, by which he is excluded from the body of the church, and disabled to bring any action, or sue any person in the common law courts. Bac. Ab. h. t.; Co. Litt. 133−4. In early times it was the most frequent and most severe method of executing ecclesiastical censure, although proper to be used, said Justinian, (Nov. 123,) only upon grave occasions. The effect of it was to remove the excommunicated "person not only from the sacred rites but from the society of men. In a certain sense it interdicted the use of fire and water, like the punishment spoken of by Caesar, (lib, 6 de Bell. Gall.). as inflicted by the Druids. Innocent IV. called it the nerve of ecclesiastical discipline. On repentance, the excommunicated person was absolved and received again to communion. These are said to be the powers of binding and loosing the keys of the kingdom of heaven. This kind of punishment seems to have been adopted from the Roman usage of interdicting the use of fire and water. Fr. Duaren, De Sacris Eccles.

Ministeriis, lib. 1, cap. 3. See Ridley's View of the Civil. and Ecclesiastical Law, 245, 246, 249.

EXCOMMUNICATIO CAPIENDO, WRIT OF, Eng. eccl. law. A writ issuing out of chancery, founded on a hishop's certificate that the defendant had been excommunicated, which writ is returnable in the king's bench. F. N. B. 62, 64, 65 Bac. Ab. Excommunication, E. See Statutes 3 Ed. I. c. 15; 9 Ed. II. c. 12; 2 & 3 Ed. VI. c. 13; 5 & 6 Ed. VI c. 4; 5 Eliz. c. 23; 1 H. V. c. 5; also Cro. Eliz. 224, 6,80; Cro. Car. 421; Cro. Jac. 567; 1 Vent. 146; 1 Salk. 293, 294, 295.

EXCUSABLE HOMICIDE, crim. law. The killing of a human being, when the party killing is not altogether free from blame, but the necessity which renders it excusable, may be said to be partly induce by his own act. 1 East, P. C. 220.

EXCUSE. A reason alleged for the doing or not doing a thing. This word presents two ideas differing essentially from each other. In one case an excuse may be made in, order to own that the party accused is not guilty; in another, by showing that though guilty, he is less so, than he appears to be. Take, for example, the case of a sheriff who has an execution against an individual, and who in performance of his duty, arrests him; in an action by the defendant against the sheriff, the latter may prove the facts, and this shall be a sufficient excuse for him: this is an excuse of the first kind, or a complete justification; the sheriff was guilty of no offence. But suppose, secondly, that the sheriff has an execution against Paul, and by mistake, and without any malicious design, be arrests Peter instead of Paul; the fact of his having the execution against Paul and the mistake being made, will not justify the sheriff, but it will extenuate and excuse his conduct, and this will be an excuse of the second kind.

3. Persons are sometimes excused for the commission of acts, which ordinarily are crimes, either because they had no intention of doing wrong, or because they had no power of judging, and therefore had no criminal will (q. v.); or having power, of judging they had no choice, and were compelled by necessity. Among the first class may be placed infants under the age of discretion, lunatics, and married women committing an offence in the presence of their hushands, not malum in se, as treason or murder; 1 Hale's P. C. 44, 45 or in offences relating to the domestic concern or management of the house, as the keeping of a bawdy house. Hawk. b. 1, c. 1, s. 12. Among acts of the second kind may be classed, the beating or killing another in self−defence; the destruction of property in order to prevent a more serious calamity, as the tearing down of a house on fire, to prevent its spreading to the neighboring property, and the like. See Dalloz, Dict. h. t.

EXEAT, eccl. law. This is a Latin term, which is used to express the written permission which a hishop gives to an ecclesiastic to exercise the functions of his ministry in another diocese.

TO EXECUTE. To make, to perform, to do, to follow out. This term is frequently used in the law; as, to execute a deed is to make a deed.

2. It also signifies to perform, as to execute a contract; hence some contracts are called executed contracts, and others are called executory contracts.

3. To execute also means to put to death by virtue of a lawful sentence; as, the sheriff executed the convict.

EXECUTED. Something done; something completed. This word is frequently used in connexion with others to designate a quality of such other words; as an executed contract; an executed estate; an executed trust, &c. It is opposed to executory.

2. An executed contract is one which has been fulfilled; as, where the buyer has paid thrice of the: thing− purchased by him. See Agreement.

3. An executed estate is when there is vested in the grantee a present and immediate right of present or future enjoyment; and in another sense, the term applies to the time of enjoyment; and in that sense, an estate is said to be executed, when it confers a present right of present enjoyment. When the right of enjoyment in possession is to arise at a future period, only, the estate is executed that is, it is merely vested in point of interest: when the right of immediate enjoyment is annexed to the estate, then only is the estate vested in possession. 1 Prest. on Est. 62.

4. Trusts executed are, when by deed or will, lands are conveyed, or devised, in terms or in effect , to and for the use of one person or several persons, in trust for others, without any direction that the trustees shall make any farther conveyance; so that it does not appear that the author of the trusts had a view to a future instrument for accomplishing his intention. Prest. on Est.188.

EXECUTIO NON. These words occur in the stat. 13 Ed. I. cap. 45, in the following connexion: Et...precipiatur vice comiti quod scire faciat parti... quod sit ad certum diem ostensura si quid sciat dicere quare hujustnodi irrotulata vel in fine contenta executionem habere non debeant. This statute is the origin of the scire facias post annum et diem quare executionem non, etc. To a plea in bar to such a writ, the defendant should conclude that the

plaintiff ought not to have or maintain his aforesaid execution thereof against him, which is called the executio non, as in other cases by actio non. (q. v.) 10 Mod. 112; Yelv. 218.

EXECUTION, contracts. The accomplishment of a thing; as the execution of a bond and warrant of attorney, which is the signing, sealing, and delivery of the same.

EXECUTION, crim. law. The putting a convict to death, agreeably to law, in pursuance of his sentence.

EXECUTION, practice. The act of carrying into effect the final judgment of a court, or other jurisdiction. The writ which authorizes the officer so to carry into effect such judgment is also called an execution.

2. A distinction has been made between an execution which is used to make the money due on a judgment out of the property of the defendant, and which is called a final execution; and one which tends to an end but is not absolutely final, as a capias ad satisfaciendum, by virtue of which the body of the defendant is taken, to the intent that the plaintiff shall be satisfied his debt, &c., the imprisonment not being absolute, but until he shall satisfy the same; this is called an execution quousque. 6 Co. 87.

3. Executions are either to recover specific things, or money. 1. Of the first class are the writs of habere facias seisinam.; (q. v.) habere facias possessionem; (q. v.) retorno habendo; (q. v.) distringas. (q. v.) 2. Executions for the recovery of money are those which issue against the body of the defendant, as the capias ad satisfaciendum, (q. v.); an attachment, (q. v.); those which issue against his goods and chattels; namely, the fieri facias, (q. v.); the, venditioni exponas, (q. v.); those which issue against his lands, the levari facias; (q. v.) the liberari facias; the elegit. (q. v.) Vide 10 Vin. Ab. 541; 1 Ves. jr. 430; 1 Sell. Pr. 512; Bac. Ab. h. t.; Com. Dig. h. t.; the various Digests, h. t.; Tidd's Pr. Index, h. t.; 3 Bouv. Inst. n. 3365, et seq. Courts will at any time grant leave to amend an execution so as to make it conformable to the judgment on which it was issued. 1 Serg. & R. 98. A writ of error lies on an award of execution. 5 Rep. 32, a; 1 Rawle, Rep. 47, 48; Writ of Bxecution;

EXECUTION PAREE. By the term execution paree, which is used in Louisiana, is meant a right founded on an authentic act; that is, and passed before a notary, by which the creditor may immediately, without citation or summons, seize and cause to be sold, the property of his debtor, out of the proceeds of which to receive his payment. It imports a confession of judgment, and is not unlike a warrant of attorney. Code of Pr. of Lo. art. 732; 6 Toull. n. 208; 7 Toull. 99.

EXECUTIONER. The name given to him who puts criminals to death, according to their sentence; a hangman.

2. In the United States, executions are so rare that there are no executioners by profession. It is the duty of the sheriff or marshal to perform this office, or to procure a deputy to do it for him.

EXECUTIVE, government. That power in the government which causes the laws to be executed and obeyed: it is usually. confided to the hands of the chief magistrate; the president of the United States is invested with this authority under the national government; and the governor of each state has the executive power in his hands.

2. The officer in whom is vested the executive power is also called the executive.

3. The Constitution of the United States directs that "the executive power shall be vested in a president of the United States of America." Art. 2, s. 1. Vide Story, Const. B. 3, c. 36.

EXECUTOR, trusts. The word executor, taken in its largest sense, has several accep tations. 1. Executor dativus, who is one called an administrator to an intestate. 2. Executor testamentarius, or one appointed to the office by the last will of a testator, and this is what is usually meant by the term.

2. In the civil law, the person who is appointed to perform the duties of an executor as to goods, is called haeres testamentarius; the term executor, it is said, is a barbarism unknown to that law. 3 Atk. 304.

3. An executor, as the term is at present accepted, is the person to whom the execution of a last will and testament of personal estate is , by the testator's appointment, confided, and who has accepted of the same. 2 Bl. Com. 503; 2 P. Wms. 548; Toller, 30; 1 Will. on Ex. 112 Swinh. t. 4, s. 2, pl. 2.

4. Generally speaking, all persons who are capable of making wills may be executors, and some others beside, as infants and married women. 2 Bl. Corn. 503.

5. An executor is absolute or qualified; his appointment is absolute when he is constituted certainly, immediately, and without restriction in regard to the testator's effects, or limitation in point of time. It may be qualified by limitation as to the time or place wherein, or the subject matters whereon, the office is to be exercised; or the creation of the office may be conditional. It may be qualified. 1st. By limitations in point of time, for the time may be limited when the person appointed shall begin, or when he shall cease to be executor; as if a man be appointed executor upon the marriage of testator's daughter. Swinb. p. 4, s. 17, pl. 4. 2. The appointment may be limited to a place; as, if one be appointed executor of all the testator's goods in the state of

Pennsylvania. 3. The power of the executor may be limited as to the subject matter upon which if is to be exercised; as, when a testator appoints. A the executor of his goods and chattels in possession; B, of his choses in action. One may be appointed executor of one thing, only, as of a particular claim or debt due by bond, and the like. Off. Ex. 29; 3 Phillim. 424. But although a testator may thus appoint separate executors of distinct parts of his property, and may divide their authority, yet quoad the creditors of the testator they are all executors, and act as one executor, and may be sued as one executor. Cro. Car. 293. 4. The appointment may be conditional, and the condition may be either precedent or subsequent. Godolph. Orph. Leg. pt. 2, c. 2, s. 1; Off. Ex. 23. 6. An executor derives his interest in the estate of the deceased entirely from the will, and it vests in him from the moment of the testator's death. 1 Will. Ex. 159; Com. Dig. Administration, B 10; 5 B. & A. 745; 2 W. Bl. Rep. 692. He acquires an absolute legal title to the personalty by appointment, but nothing in the lands of the testator, except by devise. He can touch nothing which was not personal at the testator's decease, except by express direction. 9 Serg. & Rawle, 431; Gord. Law Dec. 93. Still his interest in the goods of the deceased is not that absolute, proper and ordinary interest, which every one has in his own proper goods. He is a mere trustee to apply the goods for such purposes as are sanctioned by law. 4 T. R. 645; 9 Co. 88; 2 Inst. 236; Off. Ex. 192. He represents the testator, and therefore may sue and recover all the claims he had at the time of his death and may be sued for all debts due by him. 1 Will. Ex. 508, et seq. By the common law, however, such debts as were not due by some writing could not be recovered against the executors of a deceased debtor. The remedy was only in conscience or by a quo minus in the exchequer. Afterwards an action on the case in banco regis was given. Crom t. Jurisdic. 66, b; Plowd. Com. 183: 11 H. VII. 26.

7. The following are the principal duties of an executor: 1. Within a convenient time after the testator's death, to collect the goods of the deceased, provided he can do so peaceably; when he is resisted, he must apply to the law for redress.

8. − 2. To bury the deceased in a manner suitable to the estate he leaves behind him; and when there is just reason to believe he died insolvent, he is not warranted in expending more in funeral expenses (q. v.) than is absolutely necessary. 2 Will. Ex. 636; 1 Salk. 296; 11 Serg. & Rawle, 204 14 Serg. & Rawle, 64.

9. − 3. The executor should prove the will in the proper office.

10. − 4. He should make an inventory (q. v.) of the goods of the intestate, which should be filed in the office.

11. − 5. He should ascertain the debts and credits of the estate, and endeavor to collect all claims with as little delay as possible, consistently with the interest of the estate.

12. − 6. He should advertise for debts and credits: see forms of advertisements, 1 Chit. Pr. 521.

13. − 7. He should reduce the whole of the goods, not specifically bequeathed into money, with all due expedition.

14.−8. Keep the money of the estate safely, but not mixed with his own, or he may be charged interest on it.

15.−9. Be at all times ready to account, and actually file an account within a year.

16. − 10. Pay the debts and legacies in the order required by law.

17. Co−executors, however numerous, are considered, in law, as an individual person, and; consequently, the acts of any one of them, in respect of the administration of the assets, are deemed, generally, the acts of all. Bac. Ab. Executor, D; Touch. 484; for they have all a joint and entire authority over the whole property Off. Ex. 213; 1 Rolle's Ab. 924; Com. Dig. Administration, B 12. On the death of one or more of several joint executors, their rights and powers survive to the survivors.

18. When there are several executors and all die, the power is in common transferred to the executor of the last surviving executor, so that he is executor of the first testator; and the law is the same when a sole executor dies leaving an executor, the rights are vested in the latter. This rule has been changed, in Pennsylvania, and, perhaps, some other states, by legislative provision; there, in such case, administration cum testamento annexo must be obtained, the right does not survive to the executor of the executor. Act of Pennsylvania, of March 15 1832. s. 19. In general, executors are not responsible for each other, and they have a right to settle separate accounts. See Joint, Executors.

19. Executors may be classed into general and special; instituted and substituted; rightful and executor de son tort; and executor to the tenor.

20. A general executor is one who is appointed to administer the whole estate, without any limit of time or place, or of the subject−matter.

21. A special executor is one. who is appointed or constituted to administer either a part of the estate, or the

whole for a limited time, or only in a particular place.

22. An instituted executor is one who is appointed by the testator without any condition, and who has the first right of acting when there are substituted executors. An example will show the difference between an instituted and substituted executor: suppose a man makes his son his executor, but if he will not act, he appoints his brother, and if neither will act, his cousin; here the son is the instituted executor, in the first degree, the brother is said to be substituted in the second degree, and the cousin in the third degree, and so on. See Heir, instituted, and Swinb. pt. 4, s. 19, pl. 1.

23. A substituted executor is a person appointed executor, if another person who has been appointed refuses to act.

24. A rightful executor is one lawfully appointed by the testator, by his will. Deriving his authority from the will, he may do most acts, before he obtains letters testamentary, but he must be possessed of them before. he can declare in action brought by him, as such. 1 P. Wms. 768; Will. on Ex. 173.

25. An executor de son tort, or of his own wrong, is one, who, without lawful authority, undertakes to act. as executor of a person deceased. To make fin executor de son tort, the act of the party must be, 1. Unlawful. 2. By asserting ownership, as taking goods or cancelling a bond, and not committing a mere, trespass. Dyer, 105, 166; Cro. Eliz. 114. 3. An act done before probate of will, or granting letters of administration. 1 Salk. 313. One may be executor de son tort when acting under a forged will, which has been set aside. 3 T. R. 125 . An executor de son tort. The law on this head seems to have been borrowed from the civil law doctrine of pro hoerede gestio. See Heinnec. Antiq. Syntagma, lib. 2, tit., 17, _16, p. 468. He is, in general, held responsible for all his acts, when he does anything which might prejudice the estate, and receives no, advantage whatever in consequence of his assuming the office. He cannot sue a debtor of the estate, but may be sued generally as executor. See a good reading on the liabilities of executors de son tort, in: Godolph. Orph. Legacy, 91, 93, and 10 Wentw. Pl. 378, for forms of declaring; also, 5 Co. Rep. 50 31 a; Yelv. 137; 1 Brownlow, 103; Salk. 28; Ham. Parties, 273; Imp. Mod. Pl. 94. As to what acts will make a person liable as executor de son tort, see Godolph. O ubi sup.; Gord. Law of Dec. 87, 89; Off. Ex. 181; Bac. Ab. Executor, &c., B 3; 11 Vin. Ab. 215; 1 Dane's Ab. 561; Bull. N. P. 48; Com. Dig. Administration C 3 Ham. on Part. 146 to 156; 8 John. R. 426; 7 John. R. 161; 4 Mass. 654; 3 Penna. R. 129; 15 Serg. & Rawle, 39.

26. − 2. The ussurpation of an office or character cannot confer the rights and privileges of it, although it may charge the usurper with the duties and obligations annexed to it. On this principle an executor de son tort is an executor only for the purpose of being sued, not for the purpose, of suing. In point of form, he is sued as if he were a rightful executor. He is not denominated in the declaration executor (de son tort) of his own wrong. It would be improper to allege that the deceased person with whose estate he has intermeddled died intestate. Nor can he be made a co−defendant with a rightful executor. Ham. Part. 146, 272, 273; Lawes on Plead. 190, note; Com. Dig. Abatement, F 10. If he take out letters of administration, he is still liable to be sued as executor, and in general, it is better to sue him as executor than as administrator. Godolph. 0. Leg. 93, 94, 95, __2, 3.

27. An executor to the tenor. This phrase is ased in the ecclesiastical law, to denote a person who is not directly appointed by the will an executor, but who is charged with the duties which appertain to one; as, "I appoint A B to discharge all lawful demands against my will." 3 Phill. 116; 1 Eccl. Rep. 374; Swinb. 247 Wentw. Ex. part 4, s. 41 p. 230. Vide. generally, Bouv. Inst. Index, h. t.; 11 Vin. Ab. h. t.; Bac. Ab. h. t.; Rolle, Ab. h. t.; Nelson's Ab. h. t.; Dane's Ab. Index, h. t.; Com. Dig. Administration; 1 Supp. to Ves. jr. 8, 90, 356, 438; 2 Id. 69; 1 Vern. 302−3; Yelv. 84 a; 1 Salk. 318; 18 Engl. C. L. Rep. 185; 10 East, 295; 2 Phil. Ev. 289; 1 Rop. Leg.' 114; American Digests, h. t.; Swinburne, Williams, Lovelass, and Roberts' several treatises on the law of Executors; Off. Ex. per totum; Chit. Pr. Index; h. t. For the various pleas that may be pleaded by executors, see 7 Wentw. Plead. 596, 602; 10 Id. 378; Cowp. 292. For the origin and progress of the law in relation to executors, the reader is referred to 5 Toull. n. 576, note; Glossaire du Droit Francais, par Delauriere, verbo Executeurs Testamentaires, and the same author on art. 297, of the Custom of Paris; Poth. Des Donations Testamen taires.

EXECUTORY. Whatever may be executed; as an executory sentence or judgment, an executory contract.

EXECUTORY DEVISE, estates. An executory devise is a limitation by will of a future contingent interest in lands, contrary to the rules of limitation of contingent estate is in conveyances at law. When the limitation by will does not depart from those rules prescribed for the government of contingent remainders, it is, in that case, a contingent remainder, and not an executory devise. 4 Kent, Com. 257; 1 Eden's R. 27; 8 T. R. 763.

2. An executory devise differs from a contingent remainder, in three material points. 1. It needs no particular

estate to precede and support it; for example, a devise to A B, upon his marriage. 2. A fee may be limited after a fee, as in the case of a devise of land to C D, in fee, and if he dies without issue, or before the age of twenty−one, then to E F, in fee. 3. A term for years may be limited over after a life estate created in the same. 2 Bl. Com. 172, 173.

3. To prevent perpetuities, a rule has been adopted that the contingency must happen during the time of a life or lives in being and twenty−one years after, and the months allowed for gestation in order to reach beyond the minority of a person not in esse at the time of making the executory devise. 3 P. Wms. 258; 7 T. R. 100; 2 Bl. Com. 174; 7 Cranch, 456; 1 Gilm. 194; 2 Hayw. 375.

4. There are several kinds of executory devises; two relative to real estate, and one in relation to personal estate.

5. − 1. When the devisor parts with his whole estate, but upon some contingency, qualifies the disposition of it, and limits an estate on that contingency. For example, when the testator devises to Peter for life, remainder to Paul, in fee, provided that if James should within three months after the death of Peter pay one hundred dollars to Paul, then to James in fee; this is an executory devise to James, and if he dies during the life of Peter, his heir may perform the condition. 10 Mod. 419; Prec. in Ch. 486; 2 Binn. 532; 5 Binn. 252; 7 Cranch, 456; 6 Munf. 187; 1 Desaus. 137, 183; 4 Id. 340, 459; 5 Day, 517.

6. − 2. When the testator gives a future interest to arise upon a contingency, but does not part with the fee in the meantime; as in the case of a devise of the estate to the heirs of John after the death of John; or a devise to John in fee, to take effect six months after the testator's death; or a devise to the daughter of John, who shall marry Robert within fifteen, years. T. Raym. 82; 1 Salk. 226; 1 Lutw. 798.

7. − 3. The executory bequest of a chattel interest is good, even though the ulterior legatee be not at the time in esse, and chattels so limited are protected from the demands of creditors beyond the life of the first taker, who cannot pledge them, nor dispose of them beyond his own life interest in them. 2 Kent, Com. 285; 2 Serg. & Rawle, 59; l Desaus 271; 4 Desaus.340; 1 Bay, 78. But such a bequest, after an indefinite failure of issue, is bad. See 2 Serg. & R. 62; Watk. Prin. Con. 112, 116; Harg. note, 1 Tho. Co. Litt. 595−6, 515−16. Vide, Com. Dig. Estates by Devise., N 16; Fearne on Rem. 381; Cruise's Dig. Index, h. t.; 4 Kent, Com. 357 to 381; 2 Hill. Ab. c. 43, p. 533.

EXECUTORY PROCESS, via executoria. In Louisiana, this is a process which can be resorted to only in two. cases, namely: 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.

EXECUTORY TRUST. A trust is said to be executory where some further act is requisite to be done by the author of the trust himself or by the trustees, to give it its full, effect; as, in the case of marriage articles; or, as in the case of a will, where, property is vested in trustees in trust to settle or convey.; for, it is apparent in both of these cases, a further act, namely, a settlement or a conveyance, is contemplated.

2. The difference between an executed and an executory trust, is this, that courts of equity in cases of executed trusts will construe the limitations in the same manner as similar legal limit−ations. White's L. C. in Eq. 18. But, in cases of executory trusts, a court of equity is not, as in the case of executed trusts, bound to construe technical expressions with legal strictness, but will mould the trusts according to the intent of the creator of such trusts White's L. C. Eq. 18.

3. When a voluntary trust is executory, and not executed, if it could not be enforced at law, because it is a defective conveyance, it is not helped in equity, in favor of a volunteer. 4 John. Ch. 498, 500; 4 Paige, 305; 1 Dev. Eq. R. 93.

4. But where the trust, though voluntary, has been executed in part, it will be sustained or enforced, in equity. 1 John. Ch. R. 329; 7 Penn. St. R. 175, 178; White's L. C. in Eq. *176; 18 Ves. 140; 1 Keen's R. 551; 6 Ves. 656; 3 Beav. 238.

EXECUTRIX, A woman who has been appointed by. will to execute such will or testament. See Executor.

EXEMPLIFICATION, evidence. A perfect copy of a record, or office book lawfull kept, so far as relates to the matter in question. 3 Bouv. Inst. n. 3107. Vide, generally, 1 Stark. Ev. 151; 1 Phil. Ev. 307; 7 Cranch, 481; 3 Wheat. 234; 10 Wheat. 469; 9 Cranch, 122; 2 Yeates, 532; 1 Hayw. 359; 1 John. Cas. 238. As to the mode of authenticating records of other states, see articles Authentication, and Evidence.

EXEMPTION. A privilege which dispenses with the general rule; for example, in Pennsylvania, and perhaps in

all the other staies, clergymen are exempt from serving on juries. Exemptions are generally allowed, not for the benefit of the individual, but for some public advantage.

EXEMPTS. Persons who are not bound by law, but excused from the performance of duties imposed upon others.

2. By the Act of Congress of May 8, 1792, 1 Story, L. U. S. 252, it is provided, _2. That the vice−president of the United States the officers, judicial and executive, of the government of the United States; the members of both houses of congress, and their respective officers; all custom−house officers, with their clerks; all post officers, and stage drivers, who are employed in the care and conveyance of the mail of the post office of the United States; all ferrymen employed at any ferry on the post road; all inspectors of exports; all pilots; all mariners, actually employed in the sea service of any citizen or merchant within the United States; and all persons who now are, or may hereafter be, exempted by the laws of the respective states, Shall be, and are hereby, exempted from militia duty, notwithstanding their being above the age of eighteen, and under the age of forty−five years.

EXEQUATUR, French law. This Latin word was, in the ancient practice, placed at the bottom of a judgment emanating from another tribunal, and was a permission and authority to the officer to execute it within the jurisdiction of the judge who put it below the judgment.

2. We have something of the same kind in our practice. When a warrant for the arrest of a criminal is issued by a justice of the peace of one county, and he flies into another, a justice of the latter county may endorse the warrant and then the ministerial officer may execute it in such county. This is called backing a warrant.

EXEQUATUR, internat. law. A declaration made by the executive of a government near to which a consul has been nominated and appointed , after such nomination and appointment has been notified, addressed to the people, in which is recited the appointment of the foreign state, and that the executive having approved of the consul as such, commands all the citizens to receive, countenance, and, as there may be occasion, favorably assist the consul in the exercise of his place, giving and allowing him all the privileges, immunities, and advantages, thereto belonging. 3 Chit. Com. Law, 56; 3 Maule & Selw. 290; 5 Pardes. 1445.

EXERCITOR. A term in the civil law, to denote the person who fits out, and equips a vessel, whether he be the absolute or qualified owner, or even a mere agent. Emer. on Mar. Loans, c. 1, s. 1.

2. In English, we generally use the word "ship’s hushand," but exercitor is generally used to designate and distinguish from among several part owners of a ship, the one who has the immediate care an management of her. Hall on Mar. Loans 142, n. See Dig. 19, 2, 19, 7; Id. 14, 1 1, 15; Vicat, Vocab.; Ship’s hushand.

EXHEREDATION, civil law. The act by which a forced heir is deprived of his legitimate or legal portion which the law gives him; disinherison. (q. v.)

EXHIBIT, practice. Where a paper or other writing is on motion, or on other occasion, proved; or if an affidavit to which the paper writing is annexed, refer to it, it is usual to mark the same with a capital letter, and to add, " This paper writing marked with the letter A, was shown to the deponent at the time of his being sworn by me, and is the writing by him referred to in the affidavit annexed hereto." Such paper or other writing, with this attestation, signed by the judge or other person before whom the affidavit shall have been sworn, is called an exhibit. Vide Stra. 674; 2 P. Wms. 410; Gresl. Eq. Ev. 98.

TO EXHIBIT. To produce a thing publicly, so that it may be taken possession of, or seized. Dig. 10, 4, 2. To exhibit means also to file of record; as, it is the practice in England in personal actions, when an officer or prisoner of the king’s bench is defendant, to proceed against such defendant in the court in which he is an officer, by exhibiting, that is, filing a bill against him. Stepb. P.I. 52, n. (1); 2 Sell. Pr. 74. In medical language, to. exhibit signifies to ad minist er, to cause a thing to be taken by a patient. Chit. bled. Jur. 9.

EXHIBlTANT. One who exhibits any thing; one who is complainant in articles of the peace. 12 Adol. & Ellis, 599 40 E. C. L. R. 124.

EXHIBITION, Scotch law. An action for compelling the production of writings. In Pennsylvania, a party possessing writings is compelled, to produce them on proper notice being given, in default of which judgment is rendered against him.

EXIGENT, or EXIGI FACIAS, practice. A writ issued in the course of proceedings to out lawry, deriving its name and application from the mandatory words found therein, signifying, "that you cause to be exacted or required; and it is that proceeding in an outlawry which, with the writ of proclamation, issued at the same time, immediately precedes the writ of capias utlagatum. 2 Virg. Cas. 244.

EXIGIBLE. That which may be exacted demandable; requirable.

EXILE, civil law. The: interdiction of all places except one in which the party is foreed to make his residence.

2. This punishment did not deprive the sufferer of his right of citizenship or of his property, unless the exile were perpetual, in which case confiscation not unfrequently was a part of the sentence. Exile was temporary or perpetual. Dig. 48, 22, 4; Code, 10, 59, 2. Exile differs from deportation, (q. v.) and relegation. (q. v.) Vide, 2 Lev. 191; Co. Litt. 133, a.

EXILIUM. By this term is understood that kind of waste which either drove away the inhabitants into a species of exile, or had a tendency to do so; as the prostrating or extirpating of trees in an orchard or avenue, or about any house. Bac. Ab. Waste, A; Bract. lib. 4, c. 18, s. 13; 1 Reeves' Hist. Law, 386.

EXITUS. Issue,, child, or offspring; rents or profits of land. Cowell, h. v. In pleading, it is the issue, or the end, terminaion, or conclusion of the pleadings, and is so called, because an issue brings the pleadngs to a close. 3 Bl. Com. 314.

EXIGENDARY, Eng. law. An officerwho makes out exigents.

EXOINE, French law. An act or instrument in writing, which contains the reasons why a party in a civil suit, or a person accused, who has been summoned, agreeably to the requisitions of a decree, does not appear. Poth. Proced. Crim. s. 3, art. 3. Vide Essoin.

EXONERATION. The taking off a burden or duty.

2. It is a rule in the distribution of an intestate's estate that the debts which he himself contracted, and for which be mortgaged his land as security, shall be paid out of the personal estate in exoneration of the real.

3. But when the real estate is charged with the payment of a mortgage at the time the intestate buys it, and the purchase is made subject to it, the personal. is not in that case to be applied, in exoneration of the real estate. 2 Pow. Mortg. 780; 5 Hayw. 57; 3 Johns. Ch. R. 229.

4. But the rule for exonerating the real estate out of the personal, does not apply against specific or pecuniary legatees, nor the widow's right to paraphernalia, and with reason not against the interest of creditors. 2 Ves. jr. 64; 1 P. Wms. 693; Id. 729; 2 Id. 120,335; 3 Id. 367. Vide Pow. Mortg. Index, h. t.

EXONERATUR, practice. A short note entered on a bail piece, that the bail is exonerated or discharged in consequence of having fulfilled the condition of his obligation, made by order of the court or of a judge upon a proper cause being shown.

2. A surrender is the most usual cause; but an exoneratur may be entered in other cases, as in case of death of the defendant, or his bankruptcy. 1 Arch. Pr. 280, 281, 282; Tidd's Pr. 240.

EXPATRIATION. The voluntary act of abandoning one's country and becoming the citizen or subject of another.

2. Citizens of the United States have the right to expatriate themselves until restrained by congress; but it seems that a citizen cannot renounce his allegiance to the United States without the permission of government, to be declared by law. To be legal, the expatriation must be for a purpose which is not unlawful, nor in fraud of the duties of the emigrant at home.

3. A citizen may acquire in a foreign country commercial privileges attached to his domicil, and be exempted from the operation of commercial acts embracing only persons resident in the United States or under its protection. 2 Cranch, 120. Vide Serg. Const. Law, 318, 2d ed; 2 Kent, Com. 36; Grotius, B. 2, c. 5, s. 24; Puffend. B. 8, c. 11, s. 2, 3 Vattel, B. 1, c. 19, s. 218, 223, 224, 225 Wyckf. tom. i. 117, 119; 3 Dall. 133; 7 Wheat. 342; 1 Pet. C. C. R. 161; 4 Hall's Law Journ. 461; Bracken. Law Misc. 409; 9 Mass. R. 461. For the doctrine of the English courts on this subject, see 1 Barton's Elem. Conveyancing, 31, note; Vaugh, Rep. 227, 281, 282, 291; 7 Co. Rep. 16 Dyer, 2, 224, 298 b, 300 b; 2 P. Wms. 124; 1 Hale, P. C. 68; 1 Wood. 382.

EXPECTANCY, estates. Having a relation to or dependence upon something future.

2. Estates are of two sorts, either in possession, sometimes called estates executed; or in expectancy, which are executory. Expectancies are, first, created by the parties, called a remainder; or by act of law, called a reversion.

3. A bargain in relation to an expectancy is, in general, considered invalid. 2 Ves. 157; Sel. Cas. in Ch. 8; 1 Bro. C. C. 10; Jer. Eq. Jur. 397.

EXPECTANT. Having relation to, or depending upon something; this word is frequently used in connexion with fee, as fee expectant.

EXPECTATION. That which may be expected, although contingent. In the doctrine of life annuities, that share or number of the years of human life which a person of a given age may expect to live, upon an equality of chances.

2. In general, the heir apparent will be relieved from a contract made in relation to his expectancy. See Post Obit.

EXPENSAE LITIS. Expenses of the suit; the costs which are generally allowed to the successful party.

EXPERTS. From the Latin experti,which signifies, instructed by experience. Persons who are selected by the courts or the parties in a cause on account of their knowledge or skill, to examine, estimate, and ascertain things, and make a report of their opinions. Merl. Repert. mot Expert; 2 Lois des Batimens, 253; 2 N. S. 1 5 N.. S. 557; 3 L. R. 350; 11 L. R. 314 11 S. & R. 336; Ray. Med. Jur. Prel. Views, _29; 3 Bouv. Inst. n. 3208.

EXPILATION, civil law. The crime of abstracting the goods of a succession.

2. This is said not to be a theft, because the property no longer belongs to the deceased, nor to the heir before he has taken possession. In the common law, the grant of letters testamentary, or letters of administration, relate back to the time of the death of the testator or intestate, so that the property of the estate is vested in the executor or administrator from that period.

EXPIRATION. Cessation; end. As, the expiration of, a lease, of a contract, or statute.

2. In general, the expiration of a contract puts an end to all the engagements of the parties, except to those which arise from the non−fulfilinent of obligations created during its existence. For example, the expiration of a partnership so dissolves it, that the parties cannot in general create any new liability, but it still subsists, to enable the parties to fulfil engagements in which the partners have engaged, or to compel others to perform their obligations towards them. See Dissolution; Contracts.

3. When a statute is limited as to time, it expires by mere lapse of time, and then it has no force whatever; and, if such a statute repealed or supplied a former statute, the first statute is, i so facto, revived by the expiration of the repealing statute; 6 Whart. 294; 1 Bland, R. 664 unless it appear that such was not the intention of the legislature. 3 East, 212 Bac. Ab. Statute, D.

EXPORTATION, commercial law. The act of sending goods and merchandise from one country to another. 2 Mann. & Gran. 155; 3 Mann. & Gran. 959.

2. In order to preserve equality among the states, in their commercial relations, the constitution provides that " no tax or duty shall be laid on articles exported from any state." Art. 1, s. 9. And to prevent a pernicipus interference with the commerce of the nation, the 10th section of the 1st article of the constitution contains the following prohibition: " No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress." Vide 12 Wheat. 419; and the article Importation.

EXPOSE’ A French word, sometimes applied to a written document, containing the reasons or motives for doing a thing. The word occurs in diplomacy.

EXPOSITION DE PART, French law. The abandonment of a child, unable to take care of itself, either in a public or private place.

2. If the child thus exposed should be killed in consequence of such exposure; as, if it should be devoured by animals, the person thus exposing it would be guilty of murder. Rose. Cr. Ev. 591.

EXPRESS. That which is made known, and not left to implication. The opposite of implied. It is a rule, that when a matter or thing is expressed, it ceases to be implied by law: expressum facit cessare tacitum. Co. Litt. 183; 1 Bouv. Inst. n. 97.

EXPRESSION. The term or use of language employed to explain a thing.

2. It is a general rule, that expressions shall be construed, when they are capable of several significations, so as to give operation to the agreement, act, or will, if it can be done; and an expression is always to be understood in the sense most agreeable to the nature of the contract. Vide Clause; Construction; Equivocal; Interpretation; Words.

EXPROMISSION, civil law. The act by which a creditor accepts a new debtor, who becomes bound instead of the old, the latter being released. It is a species of novation. (q. v.) 1 Bouv. Inst. n. 802. Vide Delegation.

EXPROMMISSOR, civil law. By this term is understood the person who alone becomes bound for the debt of another, whether the latter were obligated or not. He differs from a surety, who is bound together with his principal. Dig. 12, 4, 4; Dig. 16, 1, 13; Id. 24, 3, 64, 4; Id. 38, 1, 37, 8.

EXPULSION. The act of depriving a member of a body politic, corporate, or of a society, of his right of membership therein, by the vote of such body or society, for some violation of hi’s. duties as such, or for some

offence which renders him unworthy of longer remaining a member of the same.

2. By the Constitution of the United States, art. 1, s. 5, _2, each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two−thirds' expel a member. In the case of John Smith, a senator from Ohio, who was expelled from the senate in 1807, the committee made a report which embraces the following points:

3. − 1. That the senate may expel a member for a high misdemeanor, such as a conspiracy to commit treason. Its authority is not confined to an act done in its presence.

4. − 2. That a previous conviction is, not requisite, in order to authorize the senate to expel a member from their body, for a high: offence against the United States.

5. − 3. That although a bill of indictment against a party for treason and misdemeanor has been abandoned, because a previous indictment against the principal party had terminated in an acquittal, owing to the inadmissibility of the evidence upon that indictment, yet the senate may examine the evidence for themselves, and if it be sufficient to satisfy their. minds that the party is guilty of a high misdemeanor it is a sufficient ground of expulsion.

6. − 4. That the 6th and 6th articles of the amendments of the Constitution of the United States, containing the general rights and privileges of the citizen, as to criminal prosecutions, refer only to prosecutions at law, and do not affect the jurisdiction of the senate as to expulsion.

7. − 5. That before a committee of the senate, appointed to report an opinion relative to the honor and privileges of the senate, and the facts respecting the conduct of the member implicated, such member is not entitied to be heard in his defence by counsel, to have compulsory process for witnesses, and to be confronted with his accusers. It is before the senate that the member charged is entitled to be heard.

8. − 6. − In determining on expulsion, the senate is not bound by the forms of judicial proceedings, or the rules of judicial evidence; nor, it seems, is the same degree of proof essential which is required to convict of a crime. The power of expulsion must, in its nature, be discretionary, and its exercise of a more summary character. 1 Hall's Law Journ. 459, 465.

9. Corporations have the right of expulsion in certain cases, as such power is necessary to the good order and government of corporate bodies; and the cases in which the inherent power may be exercised are of three kinds. 1. When an offence is committed which has no immediate relation to a member's corporate duty, but is of so infamous a nature as renders him unfit for the, society of honest men; such as the offences of perjury, forgery, and the like. But before an expulsion is made for a cause of this kind, it is necessary that there should be a previous conviction by a jury, according to the law of the land. 2. When the offence is against his duty as a corporator, in which case he may be expelled on trial and conviction before the corporation. 3. The third is of a mixed nature, against the member's duty. as a corporator, and also indictable by the law of the land. 2 Binn.448. See, also, 2 Burr., 536.

10. Members of what are called joint stock incorporated companies, or indeed members of any corporation owning property, cannot, without express authority in the charter, be expelled, and thus deprived of their interest in the general fund. Ang. & Ames on Corp. 238. See; generally, Ang. & Ames on Corp. ch. 11; Willcock, on Mun. Cor . 270; 1 Co. 99; 2 Bing. 293.; 5 Day 329; Sty. 478; 6 Conn. R. 532; 6 Serg. & Rawle, 469; 5 Binn. 486.

EXTENSION, comm. law. This term is applied among merchants to signify an agreement made between a debtor and his creditors, by which the latter, in order to enable the former, embarrassed in his circumstances, to retrieve his standing, agree to wait for a definite length of time after their several claims should become due and payable, before they will demand payment.

2. Among the French, a similar agreement is known by the name of atermoiement. Merl. Rep. mot Atermoiement.

EXTENT IN AID, English practice. An exchequer process, formerly much used, and now liable to be abused; it is regulated by 57 Geo. III. o. 117.

EXTENT IN CHIEF, English practice. An execution issuing out of the exchequer at the suit 'of the crown. It is a mere "fiscal writ. See. West on Extents; 2 Tidd. Index.

2. When land was extended at a valuation too low, there was no remedy at common law but to pay the money. 15 H. VII. Nor yet in chancery, unless there was fraud, because the extent was made by the oath of a jury, and deemed reasonable according to the writ of extent for that cause: otherwise every verdict might be examined in a court of chancery. Crompt. on. Jurisdic. 55 a.

EXTENUATION. That which renders a crime or tort less heinous than it would be without it: it is opposed to aggravation. (q. v.)

2. In general, extenuating circumstances go in mitigation of punishment in criminal cases, or of damages in those of a civil nature. See Aggravation; Mitigation.

EXTERRITORIALITY. This term is used by French jurists to signify the immunity of certain persons, who, although in the state, are not amenable to its laws; foreign sovereigns, ambassadors, ministers plenipotentiary, and ministers from a foreign power, are of this class. Foelix, Droit Intern. Prive, liv. 2, tit. 2, c. 2, s. 4. See Ambassador; Conflict of Laws; Minister.

EXTINCTION OF A THING. When a thing which is the subject of a contract has been destroyed, the contract is of course rescinded as, for example, if Paul sell his horse Napoleon to Peter, and promises to deliver him to the buyer in ten days, and in the mean time the horse dies, the contract is rescinded, as it is impossible to deliver a thing which is not in esse; but if Paul engage to deliver a horse to Peter in ten days, and, for the purpose of fulfilling his contract, he buys a horse and it die, this is no cause for rescinding the contract, because he can buy another and complete it afterwards. When the subject of the contract is an individual, and not generally one of a species, the contract may be rescinded; when it is one of a species which has been destroyed, then, it may still be completed, and it will be enforced. Lec. El. Dr. Rom. _1009.

EXTINGUISHMENT, contracts. The destruction of a right or contract − the act by which a contract is made void.

2. Art extinguishment may be by matter of fact and by matter of law. 1. It is by matter of fact either express, as when one receives satisfaction and full payment of a debt, and the creditor releases the debtor 11 John. 513'; or implied, as when a person hath a yearly rent out of, lands and becomes owner either by descent or purchase, of the estate subject to the payment of the rent, the latter is extinguished 3 Stew. 60; but the person must have as high an estate in the land as in the rent, or the rent will not be extinct. Co. Litt. 147. See Merger.

3. There are numerous cases where the claim is extinguished b operation of law; for example, where two persons are jointly, but not severally liable, for a simple contract debt, a judgment obtained against one is at common law an extinguishment of the claim on the other debtor. Pet. C. C. 301; see 2 John. 213. Vide, generally, Bouv. Inst. Index, h. t.; 2 Root, 492; 3 Conn. 62; 1 Hamm. 187; 11 John. 513; 4 Conn. 428; 6 Conn. 373; 1 Halst. 190 4 N. H. Rep. 251 Co. Litt. 147 b; 1 Roll. Ab. 933 7 Vin. Ab. 367; 11 Vin. Ab. 461; 18 Vin. Ab. 493 to 515 3 Nels. Ab. 818; 14 Serg. & Rawle, 209; Bac. Ab. h. t.; 5 Whart. R. 541. Vide Discharge of a Debt.

EXTORSIVELY. A technical word used in indictments for extortion. In North Carolina, it seems, the crime of extortion may be charged without using this word. 1 Hayw. R. 406.

EXTORTION, crimes. In a large sense it, signifies any oppression, under color of right: but in a more strict sense it means the unlawful taking by any officer, by color of his office, of any money or thing of value that is not due to him, or more than is due, or before it is due. 4 Bl. Com. 141; 1 Hawk. P. C. c. 68, s. 1; 1 Russ. Cr. *144. To constitute extortion, there must be the receipt of money or something of value; the taking a promissory note, which is void, is. not sufficient to make an extortion. 2 Mass. R. 523; see Bac. Ab. h. t.; Co. Litt. 168. It is extortion and oppression for an officer to take money for the performance of his duty, even though it be in the exercise of a discretionary power. 2 Burr. 927. It differs from exaction. (q. v.) See 6 Cowen, R. 661; 1 Caines, R. 130; 13 S. & R. 426 1 Yeates, 71; 1 South. 324; 3 Penna. R. 183; 7 Pick. 279; 1 Pick. 171.

EXTRA−DOTAL PROPERTY. In Louisiana this term is used to designate that property which forms no part of the dowry of a woman, and which is also called paraphernal property. Civ. Co. Lo. art. 2315. Vide Dotal Property.

EXTRA VIAM. Out of the way. When, in an action of trespass, the defendant pleads a right of way, the defendant may reply extra viam, that the trespass was committed beyond the way, or make a new assignment. 16 East, 343, 349.

EXTRACT. A part of a writing. In general this is not evidence, because the whole of the writing may explain the part extracted, so as to give it a different sense; but sometimes extracts from public books are evidence, as the extracts from the registers of births, marriages and burials, kept according to law, when the whole of the matter has been extracted which relates to the cause or matter in issue.

EXTRADITION, civil law. The act of sending, by authority of law, a person accused of a crime to a foreign jurisdiction where it was committed, in' order that he may be tried there. Merl. Rep. h. t.

2. By the constitution and laws of the United States, fugitives from justice (q. v.) may be demanded by the executive of the one state where the crime has been committed from that of another where the accused is. Const.

United States, art. 4, s. 2, 2 3 Story, Com. Const. U. S. _1801, et seq.

3. The government of the United States is bound by some treaty stipulation's to surrender criminals who take refuge within the country, but independently of such conventions, it is questionable whether criminals can be surrendered. 1 Kent. Com. 36; 4 John. C. R. 106; 1 Amer. Jurist, 297; 10 Serg. & Rawle, 125; 22 Amer. Jur. 330; Story's Confl. of Laws, p. 520; Wheat. Intern. Law, 111.

4. As to when the extradition or delivery of the supposed criminal is complete is not very certain. A case occurred in, France of a Mr. Cassado, a Spaniard, who had taken refuge in Bayonne. Upon an application made to the French government, he was delivered to the Spanish consul who had authority to take him to Spain, and while in the act of removing him with the assistance of French officers, a creditor obtained an execution against his person, and made an attempt to execute it and retain Cassado in France, but the council of state, (conseil d'etat) on appeal, decided that the courts could not interfere, and directed Cassado to be delivered to the Spanish authorities. Morrin, Dict. du Dr. Crim. h.v.

EXTRAJUDICIAL. That which does not belong to the judge or his jurisdiction, notwithstanding which he takes. cognizance of it. Extrajudicial judgments and acts are absolutely void. Vide Coram non judice, and Merl. Repert. mots Exces de Pouvoir.

EXTRAVAGANTES, canon law. This is the name given to the constitutions of the popes posterior to the Clementines; they are thus called quasi vagantes extra corpus juris, to express that they were out of the canonical law, which at first contained only the decrees of Gratian; afterwards the decretals of Gregory IX., the sexte of Boniface. VIII., the Clementines, and at last the extravagantes were added to it. There are the extravagantes of John XXII., and the common 'extravagantes.' The first contain twenty epistles, decretals or constitutions of that pope, divided under fifteen titles, without any subdivision into books. The others are epistles, decretals or constitutions of the popes who occupied the holy see, either before or after John XXII. they are divided into books like the decretals.

EXTREMIS. When a person is sick beyond the hope of recovery, and near death, he is said to be in extremism.

2. A will made in this condition, if made without undue influence, by a person of sound mind, is valid.

3. The declarations of persons in extremis, when made with a full consciousness of approaching death, ate admissible in evidence when the death of the person making them is the subject of the charge, and the circumstances of the death the subject of such declarations. 2 B. & C. 605 S. C. 9 Eng. C. L. Rep..196; and see 15 John. 286; 1 John. Rep. 159; 2 John. R. 31; 7 John. 95; 2 Car. Law. Repos. 102; 5 whart, R. 396−7.

EY. A watery place; water. Co. Litt 6.

EYE−WITNESS. One who saw the act or fact to which he testifies. When an eye−witness testifies, and is a man of intelligence and integrity, much reliance must be placed on his testimony, for he has the means of making known the truth.

EYOTT. A small island arising in a river. Fleta, lib. 3, c. 2, s. b; Bract. lib. 2, c. 2. See lsand.

EYRE. Vide Eire Justiciarii Itinerantes.

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