D.

DAM. A construction of wood, stone, or other materials, made across a stream of water for the purpose of confining it; a mole.

2. The owner of a stream not navigable, may erect a dam across it, and employ the water in any reasonable manner, either for his use or pleasure, so as not to destroy or render useless, materially diminish, or affect the application of the water by the proprietors below on the stream. He must not shut the gates of his dams and detain the water unreasonably, nor let it off in unusual quantities to the annoyance of his neighbors. 4 Dall. 211; 3 Caines, 207; 13 Mass. 420; 3 Pick, 268; 2 N. H. Rep. 532; 17 John. 306; 3 John. Ch. Rep. 282; 3 Rawle, 256; 2 Conn. Rep. 584; 5 Pick. 199; 20 John. 90; 1 Pick. 180; 4 Id. 460; 2 Binn. 475; 14 Srrg. & Rawle, 71; Id. 9; 13 John. 212; 1 McCord, 580; 3 N. H. Rep. 321; 1 Halst. R. 1; 3 Kents Com. 354.

3. When one side of the stream is owned by one person and the other by another, neither, without the eonsent of the other, can build a dam which extends beyond the filum aqua, thread of the river, without committing a trespass. Cro. Eliz. 269; 12 Mass. 211; Ang. on W. C. 14, 104, 141; vide Lois des Bat. P. 1, c. 3, s. 1, a. 3; Poth. Traite du Contrat de Societe, second app. 236; Hill. Ab. Index, h. t.; 7 Cowen, R. 266; 2 Watts, R. 327; 3 Rawle, R. 90; 17 Mass. R. 289; 5 Pick. R. 175; 4 Mass. R. 401. Vide Inundation.

DAMAGE, torts. The loss caused by one person to another, or to his property,
either with the design of injuring him, with negligence and carelessness, or by inevitable accident.

2. He who has caused the damage is bound to repair it and, if he has done it maliciousiy, he may be. compelled to pay beyond the actual loss. When damage occurs by accident, without blame to anyone, the loss is borne by the owner of the thing injured; as, if a horse run away with his rider, without any fault of the latter, and injure the property of another person, the injury is the loss of the owner of the thing. When the damage happens by the act of God, or inevitable accident, as by tempest, earthquake or other natural cause, the loss must be borne by the owner. Vide Com. Dig. h. t.; Sayer on Damages.

3. Pothier defines damage (dommiges et interets) to be the loss which some one has sustained, and the gain which he has failed of making. Obl. n. 159.

DAMAGE FEASANT, torts. This is a corruption of the French words faisant dommage, and signifies doing damage. This term is usually applied to the injury which animals belonging to one person do upon the land of another, by feeding there, treading down his grass, corn, or other production of the earth. 3 Bl. Com. 6; Co. Litt. 142, 161; Com. Dig. Pleader, 3 M 26. By the common law, a distress of animals or things damage feasant is allowed. Cow. Inst. 230; Gilb. on Distress and Replevin, 21. It was also allowed by the ancient customs of France. 11 Toull. 402 Repertoire de Jurisprudence, Merlin, au mot Fourriere; 1 Fournel, Traits de Voisinage, au mot Abandon. Vide Animals.

DAMAGED GOODS. In the language of the customs, are goods subject to duties, which have received some injury either in the voyage home, or while bonded in warehouses. See Abatement, merc. law.

DAMAGES, practice. The indemnity given by law, to be recovered from a wrong doer by the person who has sustained an injury, either in his person, property, or relative rights, in consequence of the acts of another.

2. Damages are given either for breaches of contracts, or for tortious acts.

3. Damages for breach of contract may be given, for example, for the non−performance of a written or verbal agreement; or of a covenant to do or not to do a particular thing.

4. As to the measure of damages the general rule is that the delinquent shall answer for all the injury which results from the immediate and direct breach of his agreement, but not from secondary and remote consequences.

5. In cases of an eviction, on covenant of seisin and warranty, the rule seems to be to allow the consideration money, with interest and costs. 6 Watts & Serg. 527; 2 Dev. R. 30; 3 Brev. R. 458. See 7 Shepl. 260; 4 Dev. 46. But in Massachusetts, on the covenant of warranty, the measure of damages is the value of the land at the time of eviction. 4 Kent's Com. 462, 3, and the cases there cited; 3 Mass. 523; 4 Mass. 108; 1 Bay, 19, 265; 3 Desaus. Eq. R. 247; 4 Penn. St. R. 168.

6. In estimating the measure of damages sustained in consequence of the acts of a common carrier, it frequently becomes a question whether the value of the goods at the place of embarkation or the port of destination is the rule to establish the damages sustained. It has been ruled that the value at the port of destination is the proper criterion. 12 S. & R. 186;. 8 John. R. 213; 10 John. R. 1; 14 John. R. 170; 15 John. R. 24. But contrary decisions have taken place. 3 Caines, R. 219 4 Hayw. R. 112; and see 4 Mass. R. 115; 1 T. R. 31; 4 T. R. 582.

7. Damages for tortious acts are given for acts against the person, as an assault and battery against the reputation,

as libels and slander, against the property, as trespass, when force is used; or for the consequential acts of the tort−feasor, as, when a man, in consequence of building a dam on his own premises, overflows his neighbor's land; or against the relative rights of the party injured, as for criminal conversation with his wife.

8. No settled rule or line of distinction can be marked out when a possibility of damages shall be accounted too remote to entitle a party to claim a recompense: each case must be ruled by its own circumstances. Ham. N. P. 40; Kames on Eq. 73, 74. Vide 7 Vin. Ab. 247; Yelv. 45, a; Id. 176, a; Bac. Ab. h. t.; 1 Lilly's Reg. 525; Domat, liv. 3, t. 5, s. 2, n. 4; Toull. liv. 3, n. 286; 2 Saund. 107, note; 1 Rawle's Rep. 27; Coop. Just. 606; Com. Dig. 11. t.; Bouv. Inst. Index, h. t. See, Cause; Remote.

9. Damages for torts are either compensatory or vindictive. By compensatory damages is meant such as are given morely to recompense a party who has sustained a loss in consequence of the acts of the defendant, and where there are no circumstances to aggravate the act, for the purpose of compensating the plaintiff for his loss; as, for example, Where the defendant had caused to be seized, property of A for the debt of B, when such property was out of A's possession, and there appeared reason to believe it was B's. Vindictive damages are such as are given against a defendant, who, in addition to the trespass, has been guilty of acts of outrage and wrong which cannot well be measured by a compensation in money; as, for example, where the defendant went to A's bouse, and with insult and outrage seized upon A's property, for a debt due by B, and carried it away, leaving A's family in distress. Sedgw. on Dam. 39; 2 Greenl. Ev. _253; 1 GIllis. 483; 12 Conn. 580; 2 M. & S. 77; 4 S. & R. 19; 5 Watts, 375; 5 Watts & S. 524; 1 P. S. R. 190, 197.

10. In cases of loss of which have been insured from maritime dangers, when an adjustment is made, the damages are settled by valuing the property, not according to prime cost, but at the price at which it may be sold at the time of settlling the average. Marsh. Inst. B. 1, c. 14, s. 2, p. 621. See Adjustment; Price.

DAMAGES, EXCESSIVE. Such damages as are unreasonably great, and not warranted by law.

2. The damages are excessive in the following cases: 1. When they are gre−ater than is demanded by the writ and declaration. 6 Call 85; 7 Wend. 330. 2. When they are greater than is authorized by the rules and principles of law, as in the case of actions upon contracts, or for torts done to property, the value of which may be ascertained by evidence. 4 Mass. 14; 5 Mass. 435; 6 Halst. 284.

3. But in actions for torts to the person or reputation of the plaintiff, the damages will not be considered excessive unless they are outrageous. 2 A. K. Marsh 365; Hard. 586; 3 Dana, 464; 2 Pick. 113; 7 Pick. 82; 9 John. 45; 10 John. 443; 4 Mass. 1; 9 Pick. 11; 2 Penn. 578.

4. When the damages are excessive, a new trial will be granted on that ground.

DAMAGES INADEQUATE. Such as are unreasonably low, and less than is required by law.

2. Damages are inadequate, when the plaintiff sues for a breach of contract, and the damages given are less than the amount proved. 9 Pick. 11.

3. In actions for torts, the smallness of damages cannot be considered by the court. 3 Bibb, 34. See 11 Mass. 150.

4. In a proper case, a new trial will be granted on the ground of inadequate damages.

DAMAGES ON BILLS OF EXCHANGE, contracts. A penalty affixed by law to the non−payment of a bill of exchange when it is not paid at maturity, which the parties to it are obliged to pay to the holder.

2. The discordant and shifting regulaaions on this subject which have been enacted in the several states, render it almost impossible to give a correct view of this subject. The drawer of a bill of exchange may limit the amount of damages by making a memorandum in the bill, that they shall be a definite sum; as, for example, "In case of non−acceptance or non−payment, reexchange and expenses not to exceed _____ dollars. 1 Bouv. Inst. n. 1133. The following abstract of the laws of several of the United States, will be acceptable to the commercial lawyer.

3. − Alabama. 1. When drawn on a person in the United States. By the Act of January 15, 1828, the damages on a protested bill of exchange drawn on a person, either in this or any other of the United States, are ten per cent. By the Act of December 21, 1832, the damages on such bills drawn on any person in this state, or upon any person payable in New Orleans, and purchased by the Bank of Alabama or its branches, are five per cent.

4. − 2. Damages on protested bills drawn on on person out of the United States are twenty per cent.

5. − Arkansus. 1. It is provided by the Act of February 28, 1838, s. 7, Ark. Rev. Stat. 150, that "every bill of exchange expressed to be for value received, drawn or negotiated within this state, payable after date, to order or bearer, which shall be duly presented for acceptance or payment, and protested for non−acceptance or non−payment, shall be subject to damages in the following cases: first, if the bill have been drawn on any person at any place within this state, at the rate of two per centum on the principal sum specified in the bill; second, if the bill

shall be drawn on any person, and payable in any of the states of Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, and Missouri, or any point on the Ohio river, at the rate of four per centum on the principal sum in such bill specified: third, if the bill shall have been drawn on auy person, and payable at any place within the Iimits of the United States, not hereinbefore expressed, at the rate of five per centum on the principal sum specified in the bill: fourth, if the bill shall have been drawn on any person, and payable at any point or place beyond the limits of the United States, at the rate of ten per centum on the sum specified in the bill.

6. − 2. And by the 8th section of the same act, if any bill of exchange expressed to be for value received, and made payable to order or bearer, shall be drawn on any person at any place within this state, and accepted and protested for non−payment, there shall be allowed and paid to the holder, by the acceptor, damages in the following cases: first, if the bill be drawn by any person at any place within this sate, at the rate of two per centum on the principal sum therein specified: second, if the bill be drawn at any place without this state, but within the limits of the United States, at teh rate of six per centum on the sum therein specified: third, if the bill be drawn on any person at any place without the limites of the United Sates, at the rate of ten per centum on the sum therein specified. And, by sect 9, in addition to the damages allowed inthe two preceding sections to the holder of any bill of exchange protested for non−payment or nonacceptance, he shall be entitled to costs of protest, and interest at the rate of ten per centum per annum, on the amount specified in the bill, from the date of teh protest until the amount of the bill shall be paid."

7. − Connecticut. 1. When drawn on another place in the United States. When drawn upon persons in the city of New York, two per cent. When in other parts of the state of New York, or the New England states (other than this,) New Jersey, Pennsylvania, Delaware, maryland, Virginia, or the District of Columbia, three per cent. When on persons in North or South Carolina, Georgia, or Ohio, five per cent. On other states, territories or districts, in the United States, eight per cent, on the principal sum in each case, with interest on the amount of such sum, with the damage after notice and demand. Stat. tit. 71, Notes and Bills, 413, 414. When drawn on persons residing in Connecticut no damages are allowed.

8. − 2. When the bill is drawn on person out of the United States, twenty per cent is said to be the amount which ought reasonably to be allowed. Swift’s Ev. 336. There is no statutory provision on the subject.

9. − Delaware. If any person shall draw or endorse any bill of exchange upon any person in Europe, or beyond seas, and the same shall be returned back unpaid, with a legal protest, the drawer there and all others concerned shall pay and discharge the contents of the said bill, together with twenty per cent advance f or the damage thereof; and so proportionably for a greater or less sum, in the sam specie as the same bill was drawn, or current money of this government equivalent to that which was first paid to the drawer or endorser.

10. − Georgia. 1. Bills on persons in the United States. First, in the state. No damages are allonved on protested bills of exchange drawn in the state, on a person in the state, except bank bills, on which the damages are ten per cent for refusal to pay in specie. 4 Laws of Geo. 75. Secondly, upon bills drawn or negotiated in the state on persons out of the state, but within the United States, five per cent, and interest. Act of 1823, Prince’s Dig. 454; 4 Laws of Geo. 212.

11. − 2. When drawn upon a person out of the United States, ten per cent. damages and postage, protest and necessary expenses; also the premium, if any, on the face of the bill; but if at a discount, the discount must be deducted. Act of 1827, Prince’s Dig. 462; 4 Laws of Geo. 221.

12. − Indiana. 1. When drawn by a person in the state on another person in Indiana, no damages are allowed.

13. − 2. When drawn on a person in another state, territory, or district, five per cent. 3. When drawn on a person out of the United States, ten percent. Rev. Code, c. 13, Feb. 17, 1838.

14. − Kentucky. 1. When drawn by a person in Kentucky on a person in the state, or in any other state, territory, or district of the United Stateg, no damages are allowed. See, Acts, Sessions of 1820, p. 823.

15. − 2. When on a person in a foreign country, damages are given at the rate of ten per cent. per ann. from the date of the bill until paid, but not more than eighteen months interest to be collected. 2 Litt. 101.

16. − Louisiana. The rate of damages to be allowed and paid upon the usual protest for non−acceptance, or for non−payment of bills of exchange, drawn or negotiated within this state in the following cases, is as follows: on all bills of exchange drawn on or payable in foreign countries, ten dollars upon the hundred upon the principal sum specified in such bills; on all bills of exchange, drawn on and payable in other states in the United States, five dollars upon the hundred upon the principal sum specified in such bill. Act of March 7, 1838, s. 1.

17. By the second section of the same act it is provided that such damages shall be in lieu of interest, charge of

protest, and all other charges, incurred previous to the time of giving notice of non−acceptance or non−payment; but the principal and damages shall bear interest thereafter.

18. By section 3, it is enacted, that if the contents of such bill be expressed in the money of account of the United States, the amount of the principal and of the damages herein allowed for the non−acceptance or non−payment shall be ascertained and determined, without any reference to the rate of exchange existing between this state and the place on which such bill shall have been drawn, at the time of the payment, on notice of non−acceptance or non− payment.

19. − Maine. 1. When drawn payable in the United States. The damages in addition to the interest are as follows: if for one hundred dollars or more, and drawn, accepted, or endorsed in the state, at a place, seventy−five miles distant from the place where drawn, one per cent.; if, for any sum drawn, accepted, and endorsed in this state, and payable in New Hampshire, Vermont, Connecticut, Rhode Island, or New York, three per cent; if payable in New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, or the District of Columbia, six per cent.; if payable in any other state, nine per cent. Rev. St. tit. 10 c. 115, __110, 111.

20. − 2. Out of the United States, no statutory provision. It is the usage to allow the holder of the bill the money for which it was drawn, reduced to the currency of the state, at par, and also the charges of protest with American interest upon those sums from the time when the bill should have been paid and the further sum of one−tenth of the money for which the bill was drawn, with interest upon it from the time payment of the dishonored bill was demanded of the drawer. But nothing has been allowed for re−exchange, whether it is below or above par. Per Parsons, Ch. J. 6 Mass. 157, 161 see 6 Mass. 162.

21. Maryland. 1. No damages are allowed when the bill is drawn in the state on another person in Maryland.

22. − 2. When it is drawn on any "person, company, or society, or corporation in any other of the United States," eight per cent. damages on the amount of the bill are allowed, and an amount to purchase another bill, at the current exchange, and interest and losses of protest.

24. − 3. If the bill be drawn on a "foreign country," fifteen per cent. damages are allowed, and the expense of purchasing a new bill as above, besides interest and costs of protest. See Act of 1785, c. 88.

25. − Michigan. 1. When a bill is drawn in the state on a person in the state, no damages are allowed.

26. − 2. When drawn or endorsed within the state and payable out of it, within the United States, the rule is as follows: in addition to the contents of the bill, with interest and costs, if payable within the states of Wisconsin, Illinois, Indiana, Ohio, and New York, three per cent. on the contents of the bill if payable within the states of Missouri, Kentucky, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, or the District of Columbia, five per centum; if payable elsewhere in the United States, out of Michigan, ten per cent. Rev. St. 156, S. 10.

27. − 3. When the bill is drawn within this state, and payable out of the United States, the party liable must pay the same at the current rate of exchange at the time of demand of payment, and damages at the rate of five per cent. on the contents thereof, together with interest on the said contents, which must be computed, from the date of the protest, and are in full of all damages and charges and expenses. Rev. Stat. 156, s. 9.

28. − Mississippi. 1. When drawn on a person in the state, five per cent. damages are allowed. How. & Hutch. 376, ch. 35, s. 20, L. 1827; How. Rep. 3. 195.

29. − 2. When drawn on a person in another state or territory, no damages are given. Id. 3. When drawn on a person out of the United States, ten per cent. damages are given, and all charges incideutal thereto, with lawful interest. How. & Hutch. 376, ch. 35, s. 19, L. 1837.

30. − Missouri. 1. When drawn on a person within the state, four per cent. damages on the sum specified in the bill are given. Rev. Code, 1835, _8, cl. 1, p. 120.

31. − 2. When on another state or territory, ten per cent. Rev. Code, 1835, _8, cl. 2, p. 120. 3. When on a person out of the Unted States, twenty per cent. Rev. Code, 1835, _8, cl. 3, p. 120.

32. − New York. By the Revised Statutes, Laws of N. Y. sess. 42, ch. 34, it is provided that upon bills drawn or negotiated within the state upon any person, at any place within the six states east of New York, or in New Jersey, Pennsylvania, Ohio, Delaware, Maryland, Virginia, or the District of Columbia, the damages to be allowed and paid upon the usual protest for non−acceptance or non−payment, to the holder of the bill, as purchase thereof, or of some interest therin, for a valuable consideration, shall be three per cent. upon the principal sum specified in the bill; and upon any person at any place within the states of North Carolina, South Carolina, Georgia, Kentucky, and Tennessee, five percent; and upon any person in any other state or territory of the United States, or at any

other place on, or adjacent to, this continent, and north of the equator, or in any British or foreign possessions in the West Indies, or elsewhere in the Western Atlantic Ocean, or in Europe, ten per cent. The damages are to be in lieu of interest, charges of protest, and all other charges incurred previous to, and at the time of, giving notice of non−acceptance or non−payment. But the holder will be entitled to demand and recover interest upon the aggregate amount of the principal sum specified in the bill, and the damages from time of notice of the protest for non−acceptance, or notice of a demand and protest for non−payment. If the contents of the bill be expressed in the money of account of the United States, the amount due thereon, and the damages allowed for the non−payment, are to be ascertained and determined, without reference to the rate of exchange existing between New York and the place on which the bill is drawn. But if the contents of the bills be expressed in the money of account or currency of any foreign. country, then the amount due, exclusive of the damages, is to be ascertained and determined by the rate of exchange, or the value of such foreign currency, at the time of the demand of payment.

33. − Pennsylvania. The Act of March 30, 1821, entitled an act concerning bills of exchange, enacts, that, _1, "whenever any bill of exchange hereafter be drawn and endorsed within this commonwealth, upon any person or persons, or body corporate, of, or in any other state, territory, or place, shall be returned unpaid with a legal protest, the person or persons to whom the same shall or may be payable, shall be entitled to recover and receive of and from the drawer or drawers, or the endorser or endorsers of such bill of exchange, the damages hereinafter specified, over and above the principal sum for which such bill of exchange shall have been drawn, and the charges of protest, together with lawful interest on the amount of such principal sum, damages and charges of protest, from the time at which notice of said protest shall have been given, and the payment of said principal sum and damages, and charges of protest demanded; that is to say, if such bill shall have been drawn upon any person or persons, or body corporate, of, or in any of the United States or territories thereof, excepting the state of Louisiana, five per cent. upon such principal sum; if upon any person or persons, or body corporate, of, or in Louisiana, or of, or in any other state or place in North America, or the islands thereof, excepting the northwest coast of America and Mexico, or of, or in any of the West India or Bahama Islands, ten per cent. upon such principal sum; if upon any person or persons, or body corporate, of, or in the island of Madeira, the Canaries, the Azores, the Cape de Verde Islands, the Spanish Main, or Mexico, fifteen per cent. upon such principal sum; if upon any person or persons, or body corporate, of, or in any state or place in Europe, or any of the island's thereof, twenty per cent. upon such principal sum; if upon any person or persons, or body corporate, of, or in any other part of the world, twenty−five per cent. upon such principal sum.

34. − _2. "The damages, which, by this act, are to be recovered upon any bill of exchange, shall be in lieu of interest and all other charges, except the charges of protest, to the time when notice of the protest and demand of psyment shall have been given and made, aforesaid; and the amount of such bill and of the damages payable thereon, as specified in this act, shall be ascertained and determined by the rate, of exchange, or value of the money or currency mentioned in such bill, at the time of notice of protest and demand of payment as before mentioned."

35. − Tennessee. 1. On a bill drawn or endorsed within the state upon any person or persons, or body corporate, of, or in, any other state, territory, or place, which shall be returned unpaid, with a legal protest, the holder shall be entitled to the damages hereinafter specified, over and above the principal sum for which such bill of exchange shall have been drawn, and the charge of protest, together with lawful interest on the amount of such principal sum, damages, and charges of protest, from the time at which notice of such protest shall have been given, and the payment of said principal sum, damages, and charges of protest demanded; that is to say, if such bill shall have been drawn on any person or persons, or body corporate, of, or in any of these United States, or the territories thereof, three per cent. upon such principal sum: if upon any other person or persons, or body corporate, of, or in, any other state or place in North America, bordering upon the Gulf of Mexico, or of, or in, any of the West India Islands, fifteen per cent. upon such principal sum; if upon any person or persons, or body corporate, of, or in, any other part of the world, twenty per ceut. upon such principal sum.

36. − 2. The damages which, by this act, are to be recovered upon any bill of exchange, shall be in lieu of interest and all other charges, except charges of protest, to the time when notice of the protest and demand of payment shall have been given and made as aforresaid. Carr. & Nich. Comp. 125; Act of 1827, c. 14.

DAMAGES, DOUBLE or TREBLE, practice. In cases where a statute gives a party double or treble damages, the jury are to find single damages, and the court to enhance them, according to the statute Bro. Ab. Damages, pl. 70; 2 Inst. 416; 1 Wils. 126; 1 Mass. 155. In Sayer on Damages, p. 244, it is said, the jury may assess the statute

damages and it would seem from some of the modern cases, that either the jury or the court may assess. Say. R. 214; 1 Gallis. 29.

DAMAGES, GENERAL, torts. General damages are such as the law implies to have accrued from the act of a tort−feasor. To call a man a thief, or commit an assault and battery upon his person, are examples of this kind. In the first case the law presumes that calling a man a thief must be injurious to him, with showing that it is so. Sir W. Jones, 196; 1 Saund. 243, b. n. 5; and in the latter case, the law imples that his person has been more or less deteriorated, and that the injured party is not required to specify what inury he has sustained, nor to prove it. Ham. N. P. 40; 1 Chit. Pl. 386; 2 L.R. 76; 4 Bouv. Inst. n. 3584.

DAMAGES, LAYING, pleading. In personal and mixed actions, (but not in penal actions, for obvious reason,) the declaration must allege, in conclusion, that the injury is to the damage of the plaintiff; and must specify the amount of damages. Com. Dig. Pleader, C 84; 10 Rep. 116, b.

2. In personal actions there is a distinction between actions that sound in damages, and those that do not; but in either of these cases, it is equally the practice to lay damages. There is, however, this difference: that, in the former case, damages are the main object of the suit, and are, therefore, always laid high enough to cover the whole demand; but in the latter, the liquidated debt, or the chattel demanded, being the main object, damages are claimed in respect of the detention only, of such debt or chattel; and are, therefore, usually laid at a small sum. The plaintiff cannot recover greater damages than he has laid in theconclusion of his declaration. Com. Dig. Pleader, C 84; 10 Rep. 117, a, b; Vin. Ab. Damages, R.

3. In real actions, no damages are to be laid, because, in these, the demand is specially for the land withheld, and damages are in no degree the object of the suit. Steph. Pl. 426; 1 Chit. Pl. 397 to 400.

DAMAGES, LIQUIDATED, contracts. When the parties to a contract stipulate for the payment of a certain su, as a satisfaction fixed and agreed upon by them, for the not doing of certain things particularly mentioned in the agreement, the sum so fixed upon is called liquidated damages. (q.v.) It differ from a penalty, becasue the latter is a forfeiture from which the defaulting party can be relieved. An agreement for liquidated damages can only be when there is an engagement for the performance of certain acts, the not doing of which would be an injury to one of the parties; or to guard against the performance of acts which, if done, would also be injurious. In such cases an estimate of the damages may be made by a jury, or by a previous agreement between the parties, who may foresee the consequences of a breach of the engagement, and stipulate accordingly. 1 H. Bl. 232; and vide 2 Bos. & Pul. 335, 350−355; 2 Bro. P. C. 431; 4 Burr, 2225; 2 T. R. 32. The civil law appears to agree with these principles. lnst. 3, 16, 7; Toull. liv. 3, n. 809; Civil Code of Louis. art. 1928, n. 5; Code Civil, 1152, 1153.

2. It is to be observed, that the sum fixed upon will be considered as liquidated damages, or a penalty, according to the intent of the parties, and the more use of the words − "penalty," &c "forfeiture," or "liquidated damages," will not be regarded is at all decisive of the question, if the instrument discloses, upon the whole, a different intent. 2 Story, Eq. _1318; 6 B.& C.
224; 6 Bing. 141; 6 Iredell, 186; 3 Shepl. 273; 2 Ala. 425; 8 Misso. 467.

3. Rules have been adopted to ascertain whether such sum so agreed upon shall be considered a penalty or liquidated damages, which will be here enumerated by considering, first, those cases where it has been considered as a penalty − and, secondly, where it has been considered as liquidated damages.

4. − 1. It has been treated as penalty, 1st. where the parties in the agreement have expressly declared the sum intended as a forfeiture or a penalty, and no other intent can be collected from the instrument. 2 B. & P, 340, 350, 630; 1 McMullan, 106; 2 Ala. 425; 5 Metc. 61; 1 H. Bl. 227; 1 Campb. 78; 7 Wheat. 14; 1 Pick. 451; 4 Pick. 179; 3 Johns. Cas. 297. 2d. Where it is doubtful whether it was intended as a penalty or not, and a certain debt or damages, less than the penalty, is made payable on the face of the instrument. 3 C. & P. 240; 6 Humph. 186. 3d. Where the agreement was made, evidently, for the attainment of another objeet, to which the sum specified is wholly collateral. 11 Mass. 76; 15 Mass. 488; 1 Bro. C. C. 418. 4th. Where the agreement contains several matters, of different degrees of importance, and yet the sum named is payable for the breach of any, even the least. 6 Bing. 141; 5 Bing. N. C. 390; 7 Scott, 364; sed vide, 7 John. 72; 15 John. 200. 5th. Where the contract is not under seal, and the damages are capable of being certainly known and estimated. 2 B. & Al. 704; 6 B. & C. 216; 1 M. & Malk. 41; 4 Dall. 150; 5 Cowen, 144.

5. − 2. The sum agreed upon has been considered as liquidated damages, 1st. Where the damages are uncertain, and are not capable of being ascertained by any satisfactory and known rule. 2 T. R. 32; 1 Alc. & Nap. 389; 2 Burr, 2225; 10 Ves. 429; 3 M. & W. 545; 8 Mass. 223; 3 C. & P. 240; 7 Cowen 307; 4 Wend. 468. 2d. Where,

from the tenor of the agreement, or from the nature of the case, it appears that the parties have ascertained the amount of damages by fair calculation and adjustment. 2 Story, Eq. Juris. _1318; 10 Mass. 459; 7 John. 72; 15 John. 200; 1 Bing. 302; 7 Conn. 291; 13 Wend. 507; 2 Greenl. Ev. _259; 11 N. H. Rep. 234; 6 Blackf. 206; 26 Wend. 630; 17 Wend. 447; 22 Wend. 201; 7 Metc. 583; 2 Ala. 425; 2 Shepl. 250.

Vide, generally, 7 Vin. Ab. 247; 16 Vin. Ab. 58; 2 W. Bl. Rep. 1190;. Coop. Just. 606; 1 Chit. Pr. 872; 2 Atk. 194; Finch. 117; Prec. in Ch. 102; 2 Bro. P. C. 436; Fonbl. 151, 2, note; Chit. Contr. 836; 11 N. Hamp. Rep. 234.

DAMAGES, SPECIAL, torts. Special damages are such as are in fact sustained, and are not implied by law; these are either superadded to general damages, arising from an act injurious in itself, as when some particular loss arises. from the uttering of slanderous words, actionable in themselves, or are such as arise from an act indifferent and not actionable in itself, but injurious only in its consequences, as when the words become actionable only by reason of special damage ensuing. To constitute special damage the legal and natural consequence must arise from the tort, and not be a mere wrongful act of a third person, or a remote consequence. 1 Camp. 58; Ham. N. P. 40; 1 Chit. Pl. 385, 6.

DAMAGES, SPECIAL, pleading. As distinguished from the gist of the action, signify that special damage which is stated to result from the gist; as, if a plaintiff in an action of trespass for breaking his close, entering his house, and tossing his goods about, were to state that by means of the damage done to his house, he was obliged to seek lodging elsewhere.

2. Sometimes the special damage is said to constitute the gist of the action itself; for example, in an action wherein the plaintiff declares for slanderous words, which of themselves are not a sufficient ground or foundation for the suit, if any particular damage result to the plaintiff from the speaking of them, that damage is properly said to be the gist of the action.

3. But whether special damage be the gist of the action, or only collatercal to it, it must be particularly stated in the declaration, as the plaintiff will not otherwise be permitted to go into evidence of it at the trial, because the defendant cannot also be prepared to answer it. Willes, 23. See Gist.

DAMAGES, UNLIQUIDATED. The unascertained amount which is due to a person by another for an injury to the person, property, or relative rights of the party injured. These damages, being unknown, cannot be set off against the claim which the tort feasor has against the party injured. 2 Dall. 237; S. C. 1 Yeates, 571; 10 Serg. & Rawle 14; 5 Serg. & Rawle 122.

DAMNIFICATION. That which causes a loss or damage to a society, or to one who has indemnified another. For example, when a society has entered into an obligation to pay the debt of the principal, and the principal has become bound in a bond to indemuify the surety, the latter has suffered a damnification the moment he becomes liable to be sued for the debt of the principal − and it has been held in an action brought by the surety, upon a bond of indemnity, that the terror of suit, so that the surety dare not go about his business, is a damnification. Ow. 19; 2 Chit. R. 487; 1 Saund. 116; 8 East, 593; Cary, 26.

2. A judgment fairly obtained against a party for a cause against which another person is bound to indemnify him, with timely notice to that person of the bringing of the action, is admissible as evidence in an action brought against the guarantor on the indemnity. 7 Cranch, 300, 322. See F. N. B. Warrantia Chartae; Lib. Int. Index, Warrantia Chartae; 2 S. & R. 12, 13.

DAMNIFY. To cause damage, injury or loss.

DAMNOSA HAEREDITAS. A name given by Lord Kenyon to that species of property of a bankrupt, which, so far from being valuable, would be a charge to the creditors for example, a term of years, where the rent would exceed the revenue.

2. The assignees are not bound to take such property, but they must make their election, and, having once entered into possession, they cannot afterwards abandon the property. 7 East, R. 342; 3 Campb. 340.

DAMNUM ABSQUE INJURIA. A loss or damage without injury.

2. There are cases when the act of one man may cause a damage or loss to another, and for which the latter has no remedy; he is then said to have received damnum absque injuria; as, for example, if a man should set up a school in the neighborhood of another school, and, by that means, deprive the former of its patronage; or if a man should build a mill along side of another, and consequently reduce his custom. 9 Pick. 59, 528.

3. Another instance may be given of the case where a man using proper care and diligence, while excavating for a foundation, injures the adjoining house, owing to the unsuitable materials used in such house; here the injury is damnum absque injuria.

4. When a man slanders another by publishing the truth, the person slandered is said to have sustained loss without injury. Bac. Ab. Actions on the Case, C Dane's Ab. Index, h. t.

DAMNUM FATALE, civil law. Damages caused by a fortuitous event, or inevitable accident; damages arising from the act of God. Among these were included losses by shipwreck, lightning, or other casualty; also losses by pirates or by vis major, by fire, robbery, and burglary; but theft was not numbered among these casualties.

2. In general, bailees are not liable for such damages. Story, Bailm. p. 471.

DANE−LAGE, Eng. law. That system of laws which was maintained in England while the Danes had possession of the country.

DANGERS OF THE SEA, mar. law. This phrase is sometimes put in bills of lading, the master of the ship agreeing to deliver the goods therein mentioned to the consignee, who is named, the dangers of the sea excepted. Sometimes the phrase is "Perils of the Sea." (q. v.) See 1 Brock. R. 187.

DARREIN. A corruption of the French word "dernier," the last. It is sometimes used as, "darrein continuance," the last continuance. When any matter has arisen in discharge of the defendant in action, he may take advantage of it, provided he pleads itpuis darrein continuance; for if he neglect to do so, he waives his right. Vide article darrein continuance.

DARREIN SEISIN. The name of a plea to a writ of entry or a writ of right. 3 Met. 175.

DATE. The designation or indication in an instrument of writing, of the time, and usually of the time and place, when and where it was made. When the place is mentioned in the date of a deed, the law intends, unless the contrary appears, that it was executed at the place of the date. Plowd. 7 b., 31 H. VI. This word is derived from the Latin datum, because when deeds and agreements were written in that language, immediately before the day, month and year in which they were made, was set down, it was usual to put the word datum, given.

2. All writings ought to bear a date, and in some it is indispensable in order to make them valid, as in policies of insurance; but the date in these instruments is not inserted in the body of the writing because as each subscription makes a separate contract, each underwriter sets down the day, month and year he makes his subscription. Marsh. Ins. 336.

3. Deeds, and other writings, when the date is an impossible one, take effect from the time of deliver; the presumption of law is, that the deed was dated on the day it bears date, unless, as just mentioned, the time is impossible; for example, the 32d day of January.

4. The proper way of dating, is to put the day, month, and year of our Lord; the hour need not be mentioned, unless specially required; an instance of which may be taken from the Pennsylvania Act of the 16th June, 1836, sect. 40, which requires the sheriff, on receiving a writ of fieri facias, or other writ of execution, to endorse thereon the day of the month, the year, and the hour of the day whereon he received the same.

5. In public documents, it is usual to give not only the day, the month, and the year of our Lord, but also the year of the United States, when issued by authority of the general government; or of the commonwealth, when issued under its authority. Vide, generally, Bac. Ab. Obligations, C; Com. Dig, Fait, B 3; Cruise, Dig. tit, 32, c. 20, s. 1−6; 1 Burr. 60; 2 Rol. Ab. 27, 1. 22; 13 Vin. Ab. 34; Dane's Ab. lndex, h. t. See Almanac.

DATION, civil law, contracts. The act of giving something. It differs from donation, which is a gift; dation, on the contrary, is giving something without any liberality; as, the giving of an office.

2. Dation in payment, datio in solutionem, which was the giving one thing in payment of another which was due, corresponds nearly to the accord and satisfaction of the common law.

DATION EN PAIEMFNT, civil law. This term is used in Louisiana; it signifies that, when instead of paying a sum of money due on a pre−existing debt, the debtor gives and the creditor agrees to receive a movable or immovable.

2. It is somewhat like the accord and satisfaction of the common law. 16 Toull. n. 45 Poth. Vente, U. 601. Dation en paiement resembles in some respects the contract of sale; dare in solutum, est quasi vendere. There is, however, a very marked difference between a sale and a dation en paiement. 1st. The contract of sale is complete by the mere agreement of the parties the dation en paiement requires a delivery of the thing given. 2d. When the debtor pays a certain sum which he supposed he was owing, and be discovers he did not owe so much, he may recover back the excess, not so when property other than money has been given in payment. 3d. He who has in good faith sold a thing of which he believed himself to be the owner, is not precisely required to transfer the property of it to the buyer and, while he is not troubled in the possession of the thing, he cannot pretend that the seller has not fulfilled his obligations. On the contrary, the dation en paiement is good only when the debtor

transfers to the creditor the property in the thing which he has agreed to take in, payment and if the thing thus delivered be the property of another, it will not operate as a payment. Poth. Vente, n. 602, 603, 604.

DATIVE. That which may be given or disposed of at will and pleasure. It sometimes means that which is not cast upon the party by the law, or by a testator, but which is given by the magistrate; in this sense it is that tutorship is dative, when the tutor is appointed by the malistrate. Lec. Elem. _239; Civ. Code of L. art. 288, 1671.

DAUGHTER. An immediate female descendant. See Son.

DAUGHTER−IN−LAW. In Latin, nurus, is the wife of one's son.

DAY. A division of time. It is natural, and then it consists of twenty−four hours, or the space of time which elapses while the earth makes a complete revolution on its axis; or artificial, which contains the time, from the rising until the setting of the sun, and a short time before rising and after setting. Vide Night; and Co. Lit. 135, a.

2. Days are sometimes calculated exclusively, as when an act required that an appeal should be made within twenty days after a decision. 3 Penna. 200; 3 B. & A. 581; 15 Serg. & Rawle, 43. In general, if a thing is to be done within such a time after such a fact, the day of the fact shall be taken inclusively. Hob. 139; Doug. 463; 3 T. R. 623; Com. Dig. Temps, A; 3 East, 407.

3. The law, generally, rejects fractions of days, but in some cases it takes notice of such parts. 2 B. & A. 586. Vide Date.

4. By the custom of some places, the word day's is understood to be working days, and not including Sundays. 3 Espin. N. P. C. 121. Vide, generally, 2 Chit. Bl. 141, note 3; 1 Chit. Pr. 774, 775; 3 Chit. Pr. 110; Lill. Reg. h. t; 1 Rop. Leg. 518; 15 Vin. Ab. 554; Dig. 33, 1, 2; Dig. 50, 16, 2, 1; Id. 2, 12, 8; and articles Hour; Month; Year.

DAY BOOK, mer. law. An account book, in which merchants and others make entries of their daily transactions. This is generally a book of original entries, and as such may be given in evidence to prove the sale and delivery, of merchandise or of work done.

DAY RULE, or DAY WRIT, English practice. A rule or order of the court, by which a prisoner on civil process, and not committed, is enabled, in term time, to go out of the prison, and its rule or bounds; a prisoner is enabled to quit the prison, for more or less time, by three kinds of rules, namely: 1. The day−rule. 2. The term−rule; and 3. The rules. See 9 East, R. 151.

DAYS IN BANK, Eng. practice. Days of appearance in the court of common pleas, usually called bancum. They are at the distance of about a week from each other, and are regulated by some festival of the church. 8 Bl. Com. 277.

DAYS OF GRACE. Certain days after the time limited by the bill or note, which the acceptor or drawer has a right to demand for payment of the bill or note; these days were so called because they were formerly gratuitously allowed, but now, by the custom of merchants, sanctioned by decisions of courts of justice, they are demandable of right. 6 Watts & Serg. 179. The number of these in the United States is generally three. − Chitty on Bills, h. t. But where the established usage of the where the instrument is payable, or of the bank at which it is payable, or deposited for collection, be to make the demand on the fourth or other day, the parties to the note will be bound by such usage. 5 How. U. S. Rep. 317; 1 Smith, Lead. Cas. 417. When the last day of grace happens on the 4th of July; 2 Caines Cas. in Err. 195; or on Sunday; 2 Caines' R. 343; 7 Wend. 460; the demand must be made on the day previous. 13 John. 470; 7 Wend. 460; 12 Mass. 89; 6 Pick. 80; 2 Caines, 343: 2 McCord, 436. But see 2 Conn. 69. See 20 Wend. 205; 1 Metc. R. 43; 2 Cain. Cas. 195; 7 How. Miss. R. 129; 4 J. J. Marsh. 332.

2. In Louisiana, the days of grace are no obstacle to a set off, the bill being due, for this purpose before the expiration of those days. Louis. Code, art. 2206.

3. In France all days of grace, of favor, of usage, or of local custom, for thne payment of bills of exchange, are abolished. Code de Com. art. 185. See 8 Verm. 833; 2 Port. 286; 1 Conn. 329; 1 Pick. 401; 2 Pick. 125; 3 Pick. 414; 1 N. & M. 83.

DAYS OF THE WEEK. These are Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday. See Week.

2. The court will take judicial notice of the days of the week − for example, when a writ of inquiry was stated in the pleadings to have been executed on the fifteenth of June, and, upon an examination, it was found to be Sunday, the proceeding was held to be defective. Forteso. 373; S. C. Str. 387.

DE. A preposition used in many Latin phrases − as, de bone esse, de bonis non.

DE ARBITRATIONE FACTA, WRIT. In the ancient English law, when an action was brought for the same cause of action which had been before settled by arbitration, this writ was brought. Wats. on Arb. 256.

DE BENE ESSE, practice. A technical phrase applied to certain proceedings which are deemed to be well done for the present, or until an exception or other avoidance, that is, conditionally, and in that meaning the phrase is usually accepted. For example, a declaration is filed or delivered, special bail put in, witness examined, &c. de bene esse, or conditionally; good for the present.

2. When a judge has a doubt as to the propriety of finding a verdict, h(, may direct the jury to find one de bene esse; which verdict, if the court shall afterwards be of opinion it ought to have been found, shall stand. Bac. Ab. Verdict, A. Vide 11 S. & R. 84.

DE BONIS NON. This phrase is used in cases where the goods of a deceased person have not all been administered. When an executor or administrator has been appointed, and the estate is not fully settled, and the executor or administrator is dead, has absconded, or from any cause has been removed, a second administrator is appointed to to perform the duty remaining to be done, who is called an administrator de bonis non, an administrator of the goods not administered and he becomes by the appointment the only representative of the deceased. 11 Vin. Ab. 111; 2 P. Wms. 340; Com. Dig. Administration, B I; 1 Root's 11. 425. And it seems that though the estate has been distributed, an administrator de nonis non may be appointed, if debts remain unsatisfied. 1 Root's R. 174.

DE BONIS PROPRIIS. Of his own goods. When an executor or administrator has been guilty of a devastavit, (q. v.) he is responsible for the loss which the estate has sustained, de bonis propriis. He may also subject himself to the payment of a debt of the deceased, de bonis propriis, by his false plea, when sued in a representative as, if he plead plene administravit, and it be found against him, or a release to himself, when false. In this latter case the judgment is de bonis testatoris si, et si non de bonis propriis. 1 Saund. 336 b, n. 10 Bac. Ab. Executor, B 8.

DE CONTUMACE CAPIENDO. The name of a writ issued for the arrest of a defendant who is in contempt of the ecclesiastical court. 1 Nev. & Per. 680, 685, 689; 5 Dowl. 213, 646.

DE DOMO REPARANDA. The name of an ancient common law writ, by which one tenant in common might compel his co−tenant to concur in the expense of repairing the property held in common. 8 B. & C. 269; 1 Tho. Co. Litt. 216, note 17, and p. 787.

DE DONIS, STATUTE. The name of an English statute passed the 13 Edwd. I. c. 1, the real design of which was to introduce perpetuities, and to strengthen the power of the barons. 6 Co. 40 a; Co. Litt. 21; Bac. Ab. Estates in tail, in prin.

DE FACTO, i. e. in deed. A term used to denote a thing actually done; a president of the United States de facto is one in the exercise of the executive power, and is distinguished from one, who being legally entitled to such power is ejected from it; the latter would be a president de jure. An officer de facto is frequently considered as an officer de jure, and his official acts are of equal validity. 10 S. & R. 250; 4 Binn. R. 371; 11 S. & R. 411, 414; Coxe, 318; 9 Mass. 231; 10 Mass. 290; 15 Mass. 180; 5 Pick. 487.

DE HOMINE REPLEGIANDO. The name of a writ which is used to replevy a man out of prison, or out of the custody of a private person. See Homine replegiando;
Writ de homine replegiando.

DE INJURIA, pleading. The name of a replication in an action for a tort, that the defendant committed the trespasses or crrievances of his own wrong, without the cause by,him in his plea alleged.

2. The import of this replication is to insist that the defendant committed the act complained of, from a motive and impulse altogether different from that insisted on by the plea. For example, if the defendant has justified a battery under a writ of capias, having averred, as he must do, that the arrest was made by virtue of the writ; the plaintiff may rely de injuria sua propria absque tali causa, that the defendant did the act of his own wrong, without the cause by him alleged. This replication, then, has the effect of denying the alleged, motive contained in the plea, and to insist that the defendant acted from another, which was unlawful, and not in, consequence of the one insisted upon in his plea. Steph. Pl. 186; 2 Chit. Pl. 523,.642; Hamm. N. P. 120, 121; Arch. Civ. Pl. 264; Com. Dig. Pleader, F 19.

3. The form of this replication is, "precludi non, because he says that the said defendant at the same time when, &c., of his own wrong, and without the cause by him in his said second plea alleged, committed the said trespass in the introductory part of that plea, in manner and form as the said plaintiff hath above in his said declaration complained against the said defendant, and this the said plaintiff prays, may be inquired of by the country," &c. This is the uniform conclusion of such a replication. 1 Chit. Pl. 585.

4. The replication de injuria is only allowed when an excuse is offered for personal injuries. 1 B. & P. 76; 5

Johns. R. 112; 4 Johns. 150; 12 Johns. 491. Vide 7 Vin. Ab. 503; 3 Saund. 295, note; 1 Lilly's Reg. 587.

5. In England, where the extent of the general issues has been confined in actions on contracts, and special pleas have become common in assumpsit, it has become desirable, that the plaintiff, who hss but one replication, should put in issue the several numerous allegations which the special pleas were found to contain; for, unless he could do this, he would labor under the hardship of being frequently compelled to admit the greater part of an entirely false story. It became, therefore, important to ascertain whether de injuria could not be replied to cases of this description and, after numerous cases which were presented for adjudication, it was finally settled that de injuria may be replied in assumpsit, when the plea consists of matters of excuse. 3 C. M. &,R. 65; 2 Bing. N. C. 579 4 Dowl. 647.

6. The improper use of de injuria is ground of general demurrer. 2 Lev. 65; 4 Tyrw. 771. But if the defendant do not demur, the objection will not avail after verdict. Hob. 76: Sir T. Raym. 50.

7. De injuria puts in issue the whole of the defence contained in the plea. 5 B. & A. 420; 11 East, 451; 10 Bing. 157. But if the plea state some authority in law, which, prima facie, would be a justification of the act complained of, the plaintiff will not be allowed under the plea of de injuria to show an abuse of that authority so as to convert the defendant into a tort feasor ab initio. 1 Bing. 317; 1 Bing. N. S. 387. See 1 Smith's L. C. 53 to 61; 8 Co. 66.

DE JUDAISMO, STATUTUM. The name of a statute passed in the reign of Edw. I., which enacted severe and absurd penalties against the Jews. Barr. on Stat. 197.

2. The Jews were exceedingly oppressed during the middle ages throughout Christendom, and, are so still in some countries. In France, a Jew was a serf, and his person and goods belonged to the baron on whose demesnes he lived. He could not change his domicil without permission of the baron, who could pursue him as a fugitive even on the domains of the king. Like an article of commerce, he might be lent or hired for a time, or mortgaged. If he became a Christian, his conversion was considered a larceny of the lord, and his property and goods were confiscated. They were allowed to utter their prayers only in a low voice and without chanting. They were not allowed to appear in public without some badge or mark of distinction. Christians were forbidden to employ Jews of either sex as domestics, physicians or surgeons. Admission to the bar was forbidden to Jews. They were obliged to appear in court in person, when they demanded justice for a wrong done them, and it was deemed disgraceful to an advocate to undertake the cause of a Jew. If a Jew appeared in court against a Christian, he was obliged to swear by the ten names of God, and invoke a thousand imprecations against himself, if he spoke not the truth. Sexual intercourse between a Christian man and a Jewess was deemed a crime against nature, and was punishable with death by burning. Quia est rem habere cum cane, rem habere a Christiano cum Judaea quae CANIS reputatur − sic comburi debet. 1 Fournel, Hist. des Avocats, 108, 110. See Merlin, Repert. au mot Juifs.

3. − In the fifth book of the Decretals, it is provided, that if a Jew have a servant that desireth to be a Christian, the Jew shall be compelled to sell him to a Christian for twelve pence that it shall not be lawful for them to take any Christian to be their servant that they may repair their old synagogues, but not build new − that it shall not be lawful for them to open their doors, or windows on good Friday; that their wives neither have Christian nurses, nor themselves be nurses to Christian women − that they wear different apparel from the Christians, whereby they may be known, &c See Ridley's View of the Civ. and Eccl Law, part 1, chap. 5, sect. 7 and Madox Hist. of the Exchequer, Index, as to their condition in England.

DE JURE, by right. Vide De facto.

DE LUNATICO INQUIRENDO. The name of a writ directed to the sheriff, directing him to inquire by good and lawful men whether the party charged is, a lunatic or not. See 4 Rawle, 234; 1 Whart. 52; 5 Halst. 217; 6 Wend. 497.

DE MEDIETATE LINGUAE. Of half tongue. Vide Medietas linguae.

DE MELIORIBUS DAMNIS. Of the better damages. When a plaintiff has sued several defendants, and the damages have been assessed severally against each, he has the choice of selecting the best, as he cannot recover the whole. This is doue by making, an election de melioribus damnis.

DE MERCATORIBUS. This is the name of a statute passed in the 11 Edw. I.; it is usually called the statute of Acton Burnell De Mercatoribus. It was passed in consequence of the complaints of foreign merchants, who could not recover the claims, because the lands of the debtors could not be sold for their debts. It enacted that the chattels and devisable burgages of the debtor might be sold for the payment of their debts. Cruise, Dig. t. 14, s. 6.

D.E NOVO. Anew. afresh. When a judgment upon an issue in part is reversed on error, for some mistake made by the court, in the course of the trial, a venire de novo is awarded in order that the case may again be submitted

to the jury.

DE NOVI OPERIS NUNCIATIONE, Civil law. Where a thiug is intended to be done against another man's right, the party aggrieved may have in many cases, according to the civilians, an interdict or injunctIion, to hinder that which is intended to his prejudice: as where one buildeth an house contrary to the usual and received form of building to the injury of his neighbor, there lieth an injunction de novi operis nunciatione, which being served, the offender is either to desist from his work or to put in sureties that he shall pull it down, if he do not in a short time avow, i. e. show, the lawfulness thereof.

Ridley's Civ. and Eccl. Law, part 1, chap 1, sect. 8.

DE ODIO ET ATIA. These words sisignify "from hatred and ill will." When a person was committed on a charge of a crime, from such a motive, he could sue the writ de otio et atia, and procure his liberty on giving bail. The object is now obtained by a writ of habeas corpus. Vide Writ de odio et atia.

DE PARTITIONE FACIENDA. The name of a writ for making partition. Vide Partition.

DE PROPRIETATE PROBANDA, Eng. Practice. The name of a writ which issues in a case of replevin when the defendant claims property in the chattels replevied, and the sheriff makes a return accordingly. The writ directs the sheriff to summon an inquest to determine on the validity of the claim, and, if they find for the defendant, the sheriff merely returns their finding. The plaintiff is not concluded by such finding, he may come into the court above and traverse it. Hamm. N. P. 456.

DE QUOTA LITIS. The name of a part or contract, in the civil law, by which one who has a claim difficult to recover, agrees with another to give a part for the purpose of obtaining his services to recover the rest. 1 Duv. n. 201.

2. Whenever such an agreement amounts to champerty, it is void by law. 5 Monr. 416; 5 John. Ch. 44.

3. Attorneys cannot lawfully make a bargain with their clients to receive for their compensation, a part of the thing sued for; in New York, 2 Caines, 147; Ohio, 1 Ham. 132; Alabama, 755; and some other states − but in some of the states such contracts are not unlawful.

DE REPARATIONE FACIENDA. The name of a writ which lies by one tenant in common against the other, to cause him to aid in repairing the common propert. 8 B. & C. 269.

DE RETORNO HABENDO The name of a writ issued after a judgment has been given in replevin, that the defendant should have a return of the goods replevied. See 3 Bouv. Inst. n. 3376.

DE SON TORT. Of his own wrong. This term is usually applied to a person who, having no right to meddle with the affairs or estate of a deceased person, yet undertakes to do. so, by acting as executor of the deceased. Vide Executor de son tort.

DE SON TORT DEMESNE, Of his own wrong, pleading. The name of a replication in an action for a wrong or injury. When the defendant pleads a matter merely in excuse of an injury to the person or reputation of another, the plaintiff may reply de son tort demesne sans tiel cause; that it was the defendant's own wrong without such cause. Vide the articles, De Injuria, and Without, and also 8 Co. 69 a; Bro. h. t.; Com. Dig. Pleader, F 18.

DE UNA PARTE. A deed de una parte, is one where only one party grants, gives, or binds himself to do.a thing to another. It differs from a deed inter partes. (q. v.) 2 Bouv. Inst. n. 2001.

DE WARRANTIA DIEI, WRIT, Eng. law. Where a man is required to appear on a certain day in person, and before that day the king certifies that the party is in the king's service, he may sue this writ, commanding the justices not to record his default for that day for the cause before mentioned. F. N. B. 36.

DEACON, Eccl. law. A minister or servant in the church whose office, in some churches, is to assist the priest in divine service, and the distribution of the sacrament.

DEAD Something which has no life; figuratively, something of no value.

DEAD BODY, crim. law. A corpse.

2. To take up a dead body without lawful authority, even for the purposes of dissection, is a misdemeanor, for which the offender may be indicted at common law. 1 Russ. on Cr. 414; 1 Dowl. & R. 13; Russ. & Ry. 366, ii. b; 2 Chit. Cr. Law, 35. This offence is punished by statute in New Hampshire, Laws of N. H. 339, 340 in Vermont, Laws of Vermont, 368 .c. 361; in Massachusetts, stat. 1830, c. 51; 8 Pick. 370; 11 Pick. 350; in New York, 2 Rev. Stat. 688. Vide 1 Russ. 414, n. A.

3. The preventing a dead body from being buried, is also an indictable offence. 2 T. R. 734; 4 East, 460; 1 Russ. on Cr. 415 and 416, note A.

4. To inter a dead body found in a river, it seems, would render the offender liable to an indictment for a

misdemeanor, unless he first sent for the coroner. 1 Kenyon’s R. 250.

DEAD−BORN, descent, persons. Children dead−born are considered, in law, as if they had never been conceived, so that no one can claim a title, by descent, through such dead−born child. This is the doctrine of the civil law. Dig. 50, 16, 129. Non nasci, et natum mori, pare, sunt. Mortuus exitus, non est exitus. Civil Code of Louis. art. 28. A child in ventre sa mere is considered in being, only when it is for its advantage, and not for the benefit of a third person. The rule in the common law is, probably, the same, that a dead−born child is to be considered as if he had never been conceived or born in other words, it is presumed he never had life. it being a maxim of the common law, that mortuus exitus non est exitus. Co. Litt. 29 b. See 2 Paige, R. 35; Domat, liv. prel. t. 2, s. 1, n. 4, 6; 4 Ves. 334.

DEAD FREIGHT, contracts. When the charterer of a vessel has shipped part of the goods on board, and is not ready to ship the remainder, the master, unless restrained by his special contract, may take other goods on board, and the amount which is not supplied, required to complete the cargo, is called dead freight.

2. The dead freight is to be calculated according to the actual capacity of the vessel. 3 Chit. Com. Law; 399 Stark. 450.

DEAD MAN’S PART, English law. By the custom of London, when a deceased freeman of the city left a widow and children, after deducting what was calledthe widow’s chamber, (q.v.) his personal property was divided into three parts; one of which belonged to the widow, another tot he children, and the third to the administrator. When there was only a widow, or only children, in either case they respectively took one moiety, and the administrator the other; when there was neither widow nor child, the administrator took the whole for his own use and this portion was called the "dead man’s part."

By statute of 1 Jac. 2, c. 17, this was changed, and the dead man’s part is declared to be subject to the statute of distribution. 2 Bl. Com. 518. See Bac. Ab. Customs of London, D 4.

DEAD LETTERS. Those which remain in the post−office, uncalled for. By the Act of March 8, 1825, 3 Story. L. U. S. 1993, it is enacted, by _26, "That the postmasters shall, respectively, publish, at the expiration of every three months, or oftener, when the postmaster general shall so direct, in one of the newspapers published at, or nearest, the place of his residence, for three successive weeks, a list of all the letters remaining in their respective offices; or instead thereof, shall make out a number of such lists, and cause them to be posted at such public places, in their vicinity, as shall appear to them best adapted for the information of the parties concerned; and, at the expiration of the next three months, shall send such of the said letters as then remain on hand, as dead letters, to the general post office where the same shall be opened and inspected; and if any valuable papers, or matters of consequence, shall be found therein, it shall be the duty of the postmaster general to return such letter to the writer thereof, or cause a descriptive list thereof to be inserted in one of the newspapers published at the place most convenient to the supposed residence of the owner, if within the United States; and such letter, and the contents, shall be preserved, to be delivered to the person to whom the same shall be addressed, upon payment of the postage, and the expense of publication. And if such letter contain money, the postmaster general may appropriate it to the use of the department, keeping an account thereof, and the amount shall be paid by the department to the claimant as soon as he shall be found."

3. And by the Act of July 2, 1836, 4 Sharsaw. Cont. of Story, L. U. S. 2474, it is enacted by _35 that advertisements of letters remaining in the post−offices, may, under the direction of the postmaster general, be made in more than one newspaper: provided, that the whole cost of advertising shall not exceed four cents for each letter.

DEAD−PLEDGE. A mortgage of lands or goods − mortuum vadium.

DEAF AND DUMB. No definition is requisite, as the words are sufficiently known. A person deaf and dumb is doli capax but with such persons who have not been educated, and who cannot communicate, their ideas in writing, a difficulty sometimes arises on the trial.

2. A case occurred of a woman, deaf and dumb, who was charged with a crime.

She was brought to the bar, and the indictment was then read to her, and the question, in the usual form, was put, guilty or not guilty ? The counsel for the prisoner then rose, and stated that he could not allow his client to plead to the indictment, until it was explained to her that she was at liberty to plead guilty or not guilty. This attempted to be done, but was found impossible, and she was discharged from the bar "simpliciter."

3. A person, deaf and dumb, may be examined as a witness, provided he can be sworn, that is, if he is capable of understanding the terms of the oath, and assents to it and if, after he is sworn, he can convey his ideas, with or

without an interpreter, to the court and jury. Phil., Ev. 14.

DEAF, DUMB, AND BLIND. A man born deaf, dumb, and blind, is considered an idiot. (q. v.) 1 Bl. Com. 304; F. N. B. 233; 2 Bouv. Inst. n. 2111.

DEALINGS. Traffic, trade; the transaction of business between two or more persons.

2. The English statute 6 Geo. IV. c. 16, s. 81, declares all dealings with a bankrupt, within a certain time immediately before his bankruptcy, to be void. It has been held, under this statute, that payments were included under the term "dealings." M. & M. 137; 3 Car. & P. 85; S. C. 14 Eng. C. L. R. 219.

DEAN, eccl. law. An ecelesiastictl officer, who derives his name from the fact that he presides over ten canons, or, prebondaries, at least. There are several kinds of deans, namely: 1. Deans of chapters. 2. Deans of peculiars. 3. Rural deans. 4. Deans in the colleges. 5. Honorary deans. 6. Deans of provinces.

DEATH, med. jur., crim. law, evidence. The cessation of life.

2. It is either natural, as when it happens in the usual course, without any violence; or violent, when it is caused either by the acts of the deceased, or those of others. Natural death will not be here considered further than may be requisite to illustrate the manner in which violent death occurs. A violent death is either accidental or criminal; and the criminal act was committed by the deceased, or by another.

3. The subject will be considered, 1. As it relates to medical jurisprudence; and, 2. With regard to its effects upon the rights of persons.

4. − _1. It is the office of medical jurisprudence, by the light and information which it can bestow, to aid in the detection of crimes against the persons of others, in order to subject them to the punishment which is awarded by the criminal law. Medical men are very frequently called upon to make examinations of the bodies of persons. who have been found dead, for the purpose of ascertaining the causes of their death. When it is recollected that the honor, the fortune, and even the life of the citizen, as well as the distribution of impartial justice, frequently depend on these examinations, one cannot but be struck at the responsibility which rests upon such medical men, particularly when the numerous qualities which are indispensably requisite to form a correct judgment, are considered. In order to form a − correct opinion, the physician must be not only skilled in his art, but he must have made such examinations his special study. A man may be an enlightened physician, and yet he may find it exceedingly difficult to resolve, properly, the grave and almost always complicated questions which arise in cases of this kind. Judiciary annals, unfortunately, afford but too many examples of the fatal mistakes made by physicians, and others, when considering cases of violent deaths.

5. In the examination of bodies of persons who have come to a violent death, every precaution should be taken to ascertain the situation of the place where the body was found; as to whether the ground appears to have been disturbed from its natural condition; whether there are any marks of footsteps, their size, their number, the direction to which they lead, and whence they came −whether any traces of blood or hair can be found − and whether any, and what weapons or instruments, which could have caused death, are found in the vicinity; and these instruments should be carefully preserved so that they may be identified. A case or two may here be mentioned, to show the importance of examining the ground in order to ascertain the facts. Mr. Jeffries was murdered at Walthamstow, in England, in 1751, by his niece and servant. The perpetrators were suspected from the single circumstance that the dew on the ground surrounding the house had not been disturbed on the morning of the murder. Mr. Taylor, of Hornsey, was murdered in December, 1818, and his body thrown into the river. It was evident he, had not gone into the river willingly, as the hands were found clenched and contained grass, which, in the struggle, he had torn from the bank. The marks of footsteps, particularly in the snow, bave been found, not unfrequently, to correspond with the shoes or feet of suspected persons, and led to their detection. Paris, Med. Jur. vol. iii. p. 38, 41.

6. In the survey of the body the following rules should be observed: 1. It should be as thoroughly examined as possible without changing its position or that of any of the limbs; this is particularly desirable when, from appearances, the death has been caused by a wound, because by moving it, the altitude of the extremities may be altered, or the state of a fracture or luxation changed; for the internal parts vary in their position with one another, according to the general position of the body. When it is requisite to remove it, it should be done with great caution. 2. The clothes should be removed, as far as necessary, and it should be noted what compresses or bandages (if any) are applied to particular parts, and to what extent. 3. The color of the skin, the temperature of the body, the rigidity or flexibility of the extremities, the state of the eyes, and of the sphincter muscles, noting at the same time whatever swellings, ecchymosis, or livid, black, or yellow spots, wounds, ulcer, contusion, fracture,

or luxation may be present. The fluids from the nose, mouth, ears, sexual organs, &c., should be examined; and, when the deceased is a female, it may be proper to examine the sexual organs with care, in order to ascertain whether before death she was ravished or not. 1 Briand, Med. Leg. 2eme partio, ch. 1, art. 3, n. 5, p. 318. 4. The clothes of the deceased should be carefully examined, and if parts are torn or defaced, this fact should be noted. A list should also be made of the articles found on the body, and of their state or condition, as whether the purse of the deceased had been opened; whether he had any money, &c. 5. The state of the body as to decomposition should be, particularly stated, as by this it may sometimes be ascertalued when the death took place; experience proves that in general after the expiration of fourteen days After death, decomposition has so far advanced, that identity cannot be ascertained, excepting in some strongly developed peculiarity; but in a drowned body, adipocire is not produced until five or six weeks after death but this depends upon circumstance's, and varies according to climate, seasun, &c. It is exceedingly important, however to keep this fact in view in some judicial inquiries relative to the time of death. 1 Chit. Med. Jur. 443. A memorandom should be made of all the facts as they are ascertained when possible, it should be made on the ground, but when this cannot be done, as when chemical experiments are to be made, or the body is to be dissected, they should be made in the place where these operations are performed. 1 Beck's Med. Jur. 5; Dr. Gordon Smith, 505; Ryan's Med. Jur. 145; Dr. Male's Elem. of Judicial and For. Med. 101; 3 Paris & Fonbl. Med. Jur. 23 to 25; Vilanova Y Manes, Materia Criminal Forense, Obs. 11, cap. 7, n. 7; Trebuchet, Medecine Legale, 12, et seq; 1 Briand, Med. Leg.
2eme partie, ch. 1, art. 5. Vide article Circumstances.

7. − _2. In examining the law as to the effect which death has upon the rights of others, it will be proper to consider, 1. What is the presumption of life or death. 2. The effects of a man's death.

8. − 1. It is a general rule, that persons who are proved to have been living, will be presumed to be alive till the contrary is proved and when the issue is upon the death of a person, the proof of the fact lies upon the party who asserts the death. 2 East, 312; 2 Rolle's R. 461. But when a person has been absent for a long time, unheard from, the law will presume him to be dead. It has been adjudged, that after twenty−seven years 3 Bro. C. C. 510; twenty years in another case; sixteen years; 5 Ves. 458; fourteen years; 3 Serg. & Rawle, 390 twelve years; 18 John. R. 141; seven years; 6 East, 80, 85; and even five years Finchs R. 419; the presumption of death arises. It seems that even seven years has been agreed as the time when death may in general be presumed. 1 Phil. Ev. 159. See 24 Wend. R. 221; 4 Whart. R. 173. By the civil law, if any woman marry again without certain intelligence of the death of her hushand, how longsoever otherwise her hushand be absent from her, both she and he who married her shall be punished as adulterers. Authentics, 8th Coll.; Ridley's View of the Civ. and Ecc. Law, 82.

9. The survivorship of two or more is to be proved by facts, and not by any settled Iegal rule, or prescribed presumption. 5 B. Adolp. 91; 27 E. C. L. R. 45; Cro. Eliz. 503 Bac. Ab. Execution D; 2 Phillim. 261; 1 Mer. R. 308; 3 Hagg. Eccl. R. 748; But see 1 Yo. & Coll. C. N. 121; 1 Curt. R. 405, 406, 429. In the following cases, no presumption of survivor−ship was held to arise; where two men, the father and son, were hanged about the same time, and one was seen to struggle a little longer than the other; Cor. Eliz. 503; in the case of General Stanwix, who perished at sea in the same vessel with his daughter; 1 Bl. R. 610; and in the case of Taylor and his wife, who also perished by being wrecked at sea with her, to whom he had bequeathed the principal part of his fortune. 2 Phillim. R. 261; S. C. 1 Eng. Eccl. R. 250. Vide Fearne on Rem. iv.; Poth. Obl. by Evans, vol. ii., p. 345; 1 Beck's Med. Jur. 487 to 502. The Code Civil of Fance has provided for most, perhaps all possible cases, art. 720, 721 and 722. The provisions have been transcribed in the Civil Code of Louisiana, in these words:

10. Art. 930. If several persons respectively entitled to inherit from one another, happen to perish in the same event, such as a wreck, a battle, or a conflagration, without any possibility of ascertaining who died first, the presumption of survivorship is determined by the circumstances of the fact.

11. Art. 931. lu defect of the circumstances of the fact, the determination must be guided by the probabilities resulting from the strength, ages, and−difference of sex, according to the following rules.

12. Art. 932. If those who have perished together were under the age of fifteen years, the eldest shall be presumed to have survived. If both were of the age of sixty−years, the youngest shall be presumed to have survived. If some were under fifteen years, and some above sixty, the first shall be presumed to have survived.

13. Art. 933. If those who perished together, were above the age of fifteen years, and under sixty, the male must be presumed to have survived, where there was an equality of age, or a difference of less than one year. If they were of the same sex, the presumption of survivorship, by which the succession becomes open in the order of nature, must be admitted; thus the younger must be presumed to have survived the elder.

14. − 2. The death of a man, as to its effects on others, may be considered with regard, 1. To his contracts. 2. Torts committed by or against him. 3. The disposition of his estate; and, 4. To the liability or discharge of his bail.

15. − 1st. The contracts of a deceased person are in general not affected by his death, and his executors or administrators are required to fulfil his engagements, and may enforce those in his favor. But to this general rule there are some exceptions; some contracts are either by the terms employed in making them, or by implication of law, to continue only during the life of the contracting party. Among these may be mentioned the following cases: 1. The contract of marriage.− 2. The partnership of individuals. The contract of partnership is dissolved by death, unless otherwise provided for. Indeed the partnership will be dissolved by the death of one or more of the partners, and its effects upon the other partners or third persons will be the same, whether they have notice of the death or otherwise. 3 Mer. R. 593; Story, Partn. _319, 336, 343; Colly. Partn. 71; 2 Bell's Com. 639, 5th ed.; 3 Kent, Com. 56, 4th ed.; Gow, Partn. 351; 1 Molloy, R. 465; 15 Ves. 218; S. C. 2 Russ. R. 325.; 3. Contracts which are altogether personal; as, for example, where the deceased had agreed to accompany the other party to the contract, on a journey, or to serve another; Poth. Ob. P. 3, c. 7, a. 3, _2 and 3; or to instruct an apprentice. Bac. Ab. Executor, P; 1 Burn's Just. 82, 3; Hamm. on Part. 157; 1 Rawle's R. 61.

16. The death of either a constituent or of an attorney puts an end to the power of attorney. To recall such power two things are necessary; 1st. The will or intention to recall; and, 2d. Special notice or general authority. Death is a sufficient recall of such power, answering both requisites. Either it is, according to one hypothesis, the intended termination of the authority or, according to the other, the cessation of that will, the existence of which is requisite to the existence of the attorney's power; while on either supposition, the event is, or is supposed to be, notorious. But exceptions are admitted where the death is unknown, and the authority, in the meanwhile, is in action, and relied on. 3 T. R. 215; Poth; Ob. n. 448.

17. − 2d. In general, when the tort feasor or the party who has received the injury dies, the action for the recovery of the damages dies with him; but when the deceased might have waived the tort, and maintained assumpsit arainst the defendant, his personal representative may do the same thing. See the article Actio Personalis moriturcum persona, where this subject is more fully examined. When a person accused and guilty of crime dies before trial, no proceedings can be had against his representatives or his estate.

18. − 3d. By the death of a person seised of real estate, or possessed of personal property at the time of his death; his property vests when he has made his will, as he has directed by that instrument; but when he dies intestate, his real estate vests in his heirs at law by descent, and his personal property, whether in possession or in action, belongs to his executors or administrators.

19. − 4th. The death of a defendant discharges the special bail. Tidd, Pr. 243; but when he dies after the return of the ca. sa., and before it is filed, the bail are fixed. 6 T. R. 284; 5 Binn. R. 332, 338; 2 Mass. R. 485; 1 N. H. Rep. 172; 12 Wheat. 604; 4 John. R. 407; 3 McCord, R. 49; 4 Pick. R. 120; 4 N. H. Rep. 29.

20. Death is also divided into natural and civil.

21. Natural death is the cessation of life.

22. Civil death is the state of a person who, though possessing natural life, has lost all his civil rights, and, as to them, is considered as dead. A person convicted and attainted of felony, and sentenced to the state prison for life, is, in the state of New York, in consequence of the act of 29th of March, 1799, and by virtue of the conviction and sentence of imprisonment for life, to be considered as civilly dead. 6 Johns. C R. 118; 4 Johns. C. R. 228, 260; Laws of N. Y. Sess. 24, ch. 49, s. 29, 30, 31; 1 N. R. L. 157, 164; Co. Litt. 130, a; 3 Inst. 215; 1 Bl. Com. 132, 133; 4 Bl. Com. 332; 4 Vin. Ab. 152. See. Code Civ. art. 22 a 25; 1 Toull. n. 280 and p. 254, 5, note; also, pp. 243−5, n. 272; 1 Malleville's Discussion of the Code Civil, 45, 49, 51, 57. Biret, Vocab. au mot Effigie.

23. Death of a partner. The following effects follow the death of a partner, namely: 1. The partnership is dissolved, unless otherwise provided for by the articles of partnership. Gow's Partn. 429. 2. The representatives of the deceased partner become tenants in common with the survivor in all partnership effects in possession. 3. Choses in action so far survive that the right to reduce them into possession vests exclusively in the survivor. 4. When recovered, the representatives of the deceased partner have, in, equity, the same right of sharing and participating in them that their testator or intestate would have had had he been living. 5. It is the duty and the right of the surviving partner to settle the affairs of the firm, for which he is not allowed any compensation. 6. The surviving partner is alone to be sued at law for debts of the firm, yet recourse can be had in equity against the assets of the deceased debtor. Gow's Partn. 460. Vide Capital Crime; Dissolution; Firm; Partners; Partnership; Punishment. See, generally, Bouv. Inst. Index, h. t.

DEATH BED, Scotch law. The incapacity to exercise the power of disposing of one's property after being attacked with a mortal disease.

2. It commences with the beginning of such disease.

3. There are two exceptions to this general rule, namely: 1. If he survive for sixty days after the act or, 2. If he go to kirk or market unattended. He is then said to be in legitima potestate, or in liege poustie. 1 Bell's Com. 84, 85.

DEATH BED OR DYING DECLARATIONS. In cases of homicide, those which are made in extremis, when the person making them is conscious of his danger and has given up all hopes of recovery, charging some other person or persons with the murder. See 1 Phil. Ev. 200; Stark. Ev. part 4, p 458; 15 Johns. R. 288; 1 Hawk's R. 442; 2 Hawk's R. 31; McNally's Ev. 174; Swift's Ev. 124.

2. These declarations, contrary to the general rule that, hearsay is not evidence, are constantly received. The principle of this exception is founded partly on the situation of the dying person, which is considered to be as powerful over his conscienceas the obligation of an oath, and partly on the supposed absence of interest on the verge of the next world, which dispenses with a necessity of a cross−examination. But before such declarations can be ad−mitted in evidence against a prisoner, it must be satisfactorily proved, that the deceased at the time of making them was conscious of his danger and had given up all hopes of recovery. 1 Phil. Ev. 215, 216; Stark. Ev. part 4, p. 460.

3. They are admissible, as such, only in cases of homicide, where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the dying declarations. 2 B. & C. 605; 15 John. 286: 4 C. & P. 233.Vide. 2 M. & Rob. 53.

4. The declarant must not have been incapable of a religious sense of accountability to his Maker; for, if it appears that such religious sense was wanting, whether it arose from infidelity, imbecility or tender age, the declarations are alike inadmissible. 1 Greenl. Ev. _157; 1 Phil. Ev. 289; Phil. & Ani. Ev. 296; 2 Russ. on Cr. 688. See, in general, Bac. Abr. Evidence, K; Addis. R. 832 East's P. C. 354, 356; 1 Stark. C. 522 2 Hayw. R. 31; 1 Hawk's R. 442; Swift's Ev. 124; Pothier, by Evans, vol. 2, p. 293; Anth. N. P. 176, and note a; Str. 500.

DEATH'S PART, English law. That portion of the personal estate of a deceased man which remained after his wife and children had received their reasonable parts from his estate; which was, if he had both a wife and child or children, one−third part; if a wife and no child, or a child or children and no wife, one−half; if neither wife nor child, he had the whole to dispose of by his last will and testament; and if he made no will, the same was to go to his ad−ministrator. And within the city of London, and throughout the province of York, in case of intestacy, the wife and children were till lately entitled to their reasonable parts, and the residue only was distributable by, the statute of distribution; but by the 11 G. I. c. 18, s. 17, 18, the power of devising was thrown generally open. Burn's L. Dict., See this dict. tit. Legitime, and Lex Falcidia.

DEBATE, legislation, practice. A contestation between two or more persons, in which they take different sides of a question, and maintain them, respectively, by facts and arguments; or it is a discussion, in writing, of some contested point.

2. The debate should be conducted with fairness, candor and decorum, and supported by facts and arguments founded in reason; when, in addition, it is ornamented by learning, and decorated by the powers of rhetoric, it becomes eloquent and persuasive. It is essential that the power of debate should be free, in order to an energetic discharge of his duty by the debator.

3. The Constitution of the United States, art. 1, s. 6, provides, that for any speech or debate, in either bouse, the senators and representatives shall not be questioned in any other place.

4. It is a rule of the common law, that counsel may, in, the discharge of professional duty, use strong epithets, however derogatory to the character of the opponent, or his attorney, or other agent or witness, in commenting on the facts of the case, if pertinent to the cause, and stated in his instructions, without any liability to any action for the supposed slander, whether the thing stated were true or false. 1 B. & Ald. 232; 3 Dow's R. 273, 277, 279; 7 Bing. R. 459; S. C. 20 E. C. L. R. 198. Respectable and sensible counsel, however, will always refrain from the indulgence of any unjust severity, both on their own personal account, and because browheating a witness, or other person, will injuriously affect their case in the eyes of a respectable court and jury. 3 Chit. Pr. 887, 8.

DEBENTURE. A certificate given, in pursuance of law, by the collector of a port of entry, for a certain sum, due by the United States, payable at a time therein mentioned, to an importer for drawhack of duties on merchandise

imported and exported by him, provided the duties arising on the importation of the said merchandise shall have been discharged prior to the time aforesaid. Vide Act of Congress of March 2, 1799, s. 80; Encyclop6die, h. t.; Dane's Ab. Index, h. t.

DEBET ET DETINET, pleading. He owes and detains. In an action of.debt, the form of the writ is either in the debet and detinet, that is, it states that the defendant owes and unjustly detains the debt or thing in question, it is so brought between the original contracting parties; or, it is in the detinet only; that is, that the defendant unjustly detains from the plaintiff the debt or thing for which the action is brought; this is the form in in action by an executor, because the debt or duty is not due to him, but it is unjustly detained from him. 1 Saund. 1.

2. There is one case in which the writ must be in the detinet between the contracting parties. This is when the action is instituted for the recovery of goods, as a horse, a ship, and the like, the writ must be in the detinet, for it cannot be said a man owes another a horse, or a ship, but only that he detains them from him. 3 Bl. Com. 153, 4; 11 Vin. Ab. 32 1; Bac. Ab. Debt, F; 1 Lilly's Reg. 543; Dane's Ab. h. t.

DEBIT, accounts, commerce. A term used in book−keeping, to express the left−hand page of the ledger, to which are carried all the articles supplied or paid on the subject of an account, or that are charged to that account. It also signifies the balance of an account.

DEBITUM IN PRAESENTI, SOLVENDUM IN FUTURO. A debt due at present, to be paid in future. There is a difference between debt payable now and one payable at a future time. On the former an action may be brought, on the latter no action lies until it becomes due. See Due; Owing; and 13 Pet. 494; 11 Mass. 493.

DEBT, contracts. A sum of money due by certain and express agreement. 3 Bl. Com. 154. In a less technical sense, as in the "act to regulate arbitrations and proceedings in courts of justice" of Pennsylvania, passed the 21st of March, 1806, s. 5, it means an claim for money. In a still more enlarged sense, it denotes any kind of a just demand; as, the debts of a bankrupt. 4 S. & R. 506.

2. Debts arise or are proved by matter of record, as judgment debts; by bonds or specialties; and by simple contracts, where the quantity is fixed and specific, and does not depend upon any future valuation to settle it. 3 Bl. Com. 154; 2 Hill. R. 220.

3. According to the civilians, debts are divided into active and passive. By the former is meant what is due to us, by the latter, what we owe. By liquid debt, they understand one, the payment of which may be immediately enforced, and not one which is due at a future time, or is subject to a condition; by hypothecary debt is meant, one which is a lien over an estate and a doubtful debt, is one the payment of which is uncertain. Clef des Lois Rom. h. t.

4. Debts are discharged in various ways, but principally by payment. See Accord and Satisfaction; Bankruptcy; Confusion Compensation; Delegation; −Defeasance; Discharge of a contract; Extinction; Extinguishment; Former recovery; Lapse of time; Novation; Payment; Release; Rescission; Set off.

5. In payment of debts, some are to be paid before others, in cases of insolvent estates first, in consequence of the character of the creditor, as debts due to the United States are generally to be first paid; and secondly, in consequence of the nature of the debt, as funeral expenses and servants' wages, which are generally paid in preference to other debts. See Preference;
Privilege; Priority.

DEBT, remedies. The name of an action used for the recovery of a debt eo nomine and in numero though damages are generally awarded for the detention of the debt; these are, however, in most instances, merely nominal. 1 H. Bl. 550; Bull. N. P. 167 Cowp. 588.

2. The subject will be considered with reference, 1. To the kind of claim or
obligation on which this action may be maintained. 2. The form of the declara−
tion. 3. The plea. 4. The judgment.

3. − _1. Debt is a more extensive remedy for the recovery of money than assumpsit or covenant, for it lies to recover money due upon legal liabilities, as, for money lent, paid, had and received, due on an account stated; Com. Dig. Dett, A; for work and labor, or for the price of goods, and a quantum valebant thereon; Com. Dig. Dett, B Holt, 206; or upon simple contracts, express or implied, whether verbal or written, or upon contracts under seal, or of record, or by a common informer, whenever the demand for a sum is certain, or is capable of being reduced to certainty. Bull. N. P. 167. It also lies to recover money due on, any specialty or contract under seal to pay money. Str. 1089; Com. Dig. Dett, A 4; 1 T. R. 40. This action lies on a record, or upon a judgment of a court of record; Gilb. Debt, 891; Salk. 109; 17 S. & R. 1; or upon a foreign judgment. 3 Shepl. 167; 3 Brev. 395. Debt is a

frequent remedy on statutes, either at the suit of the party grieved, or of a common informer. Com. Dig. Action on Statute, E; Bac. Ab. Debt, A. See, generally, Bouv. Inst. Index, h. t.; Com. Dig. h. t.; Dane's Ab. h. t.. Vin. Ab. h. t.; Chit. Pl. 100 to 109; Selw. N. P. 553 to 682; Leigh's N. P. Index, h. t. Debt also lies, in the detinet, for goods; which action differs from detinue, because it is not essential in this action, as in detinue, that the property in any specific goods should be vested in the plaintiff, at the time the action is brought; Dy. 24 b; and debt in the debet and detinet may be maintained on an instru−
ment by which the defendant is bound to pay a sum of money lent, which might have been discharged, on or before the day of payment, in articles of merchandise. 4 Yerg. R. 171; see, Com. Dig. Dett, A 5; Bac. Ab. Debt, F; 3 Woodd. 103, 4; 1 Dall. R. 458.

4. − _2. When the action is on a simple contract, the declaration must show the consideration of the contract, precisely as in assumpsit; and it should state either a legal liability or an express agrement, though not a promise to pay the debt. 2 T. R. 28, 30. When the action is founded on a specialty or record, no consideration need be shown, unless the performance of the consideration constitutes a condition precedent, when performance of such consideration must be averred. When the action is founded on a deed, it must be declared upon, except in the case of debt for rent. 1 New R. 104.

5. − _3. The plea to an action of debt is either general or special. 1. The plea of general issue to debt on simple contracts, or on statutes, or when the deed is only matter of inducement, is nil debet. See Nil debet. In general, when the action is on a specialty, the plea denying the existence of the contract is non est factum; 2 Ld. Raym. 1500; to debt on record, nul tiel record. 16 John. 55. Other matters must, in general, be pleaded specially.

6.− _4. For the form of the judgment, see Judgment in debt. Vide Remedy.

DEBTEE. One to whom a debt is due a creditor, as, debtee executor. 3 Bl. Com. 18.

DEBTOR, contracts. One who owes a debt; he who may be constrained to pay
what he owes.

2. A debtor is bound to pay his debt personally, and all the estate he possesses or may acquire, is also liable for his debt.

3. Debtors are joint or several; joint, when they all equally owe the debt in solido; in this case if a suit should be necessary to recover the debt, all the debtors must be sued together or, when some are dead, the survivors must be sued, but each is bound for the whole debt, having a right to contribution from the others; they are several, when each promises severally to pay the whole debt; and obligations are generall binding on both or all debtors jointly and severally. When they are severally bound each may be sued separately, and on the payment of debt by one, the others will be bound to contribution, where all had participated in the money or property, which was the cause of the debt.

4. Debtors are also principal and surety; the principal debtor is bound as between him and his surety to pay the whole debt. and if the surety pay it, he will be entitled to recover against the principal. Vide Bouv. Inst. Index, h. t.; Vin. Ab. Creditor and Debtor; Id. Debt; 8 Com. Dig. 288; Dig. 50, 16, 108 Id. 50, 16, 178, 3; Toull. liv. 2, n. 250.

DECAPITATION, punishment. The punishment of putting a person to death by taking off his head.

DECEDENT. In the acts of descent and distribution in Pennsylvania, this word is frequently used for a deceased person, testate or intestate.

DECEIT, tort. A fraudulent. misrepresentation or contrivance, by which one man deceives another, who has no means of detecting the fraud, to the injury and damage of the latter.

2. Fraud, or the intention to deceive, is the very essence of this injury, for if the party misrepresenting was himiself mistaken, no blame can attach to him. The representation must be made malo animo, but whether or not the party is himself to gain by it, is wholly immaterial.

3. Deceit may not only be by asserting a falsebood deliberately to the injury of another as, that Paul is in flourishing circumstances, whereas he is in truth insolvent; that Peter is an honest man, when he knew him to be a, rogue; that property, real or personal, possesses certain qualities, or belongs to the vendor, whereas he knew these things to be false; but by any act or demeanor which would naturally impress the mind of a careful man with a mistaken belief.

4. Therefore, if one whose manufactures are of a superior quality, distinguishes them by a particular mark, which facts are known to Peter, and Paul counterfeits this work, and affixes them to articles of the same description, but not made by such person, and sells them to Peter as goods of such manufacture, this is a deceit.

5. Again, the vendor having a knowledge of a defect in a commodity which cannot be obvious to the buyer, does not disclose it, or, if apparent, uses an artifice and conceals it, he has been guilty of a fraudulent misrepresentation for there is an implied condition in every contract that the parties to it act upon equal terms, and the seller is presumed to have assured or represented to the vendee that he is not aware of any secret deficiencies by which the commodity is impaired, and that he has no advantage which himself does not pos−
sess.

6. But in all these cases the party injured must have no means of detecting the fraud, for if he has such means his ignorance will not avail him in that case he becomes the willing dupe of the other's artifice, and volenti non fit injuria. For example, if a horse is sold wanting an eye, and the defect is visible to a common observer, the purchaser cannot be said to be deceived, for by inspection he might discover it, but if the blindness is only discoverable by one experienced in such diseases, and the vendee is an inexperienced person, it is a deceit, provided the seller knew of the
defect.

7. The remedy for a deceit, unless the right of action has been suspended or discharged, is by an action of trespass on the case. The old writ of deceit was brought for acknowledging a fine, or the like, in another name, and this being a perversion of law to an evil purpose, and a high contempt, the act was laid contra pacem, and a fine imposed upon the offender. See Bro. Abr. Disceit; Vin Abr. Disceit.

8. When two or more persons unite in a deceit upon another, they may be indicted for a conspiracy. (q. v.) Vide, generally, 2 Bouv. Inst. n. 2321−29; Skin. 119; Sid. 375; 3 T. R. 52−65; 1 Lev. 247; 1 Strange, 583; D Roll. Abr. 106; 7 Barr, Rep. 296; 11 Serg. & R. 309, 310; Com. Dig. Action upon the case for a deceit; Chancery, 3 F 1 and 2; 3 M 1; 3 N 1; 4 D 3; 4 H 4; 4 L 1; 4 O 2; Covin; Justices of the Peace, B 30; Pleader, 2 H; 1 Vin. Ab. 560; 8 Vin. Ab. 490; Doct. Pl. 51; Dane's Ab. Index, h. t.; 1 Chit. Pr. 832 Ham. N. P. c. 2, s. 4; Ayl. Pand. 99 2 Day, 531; 12 Mass. 20; 3 Johns. 269; 6 Johns. 181; 2 Day, 205, 381; 4 Yeates, 522; 18 John. 395: 8 John. 23; 4 Bibb, 91; 1 N. & M. 197. Vide, also, articles Equality; Fraud; Lie.

TO DECEIVE. To induce another either by words or actions, to take that for true which is not so. Wolff, Inst. Nat. _356.

DECEM TALES, practice. In the English law this is a writ which gives to the sheriff apponere decem tales; i. e. to appoint ten such men for the supply of jurymen, when a sufficient number do not appear to make up a full jury.

DECENNARY, Eng. law. A town or tithing, consisting originally of ten families of freeholders. Ten tithings composed a hundred. 1 Bl. Com. 114.

DECIES TANTUM, Eng. law. The name of an obsolete writ which formerly lay against a juror who had taken money for giving his verdict; called so, because it was sued out to recover from him ten times as much as he took.

DECMATION. The punishment of every tenth soldier by lot, was, among the Romans, called decimation.

DECIME. A French coin, of the value of a tenth part of a franc, or nearly two cents.

DECISION, practice. A judgment given by a competent tribunal. The French lawyers call the opinions which they give on questions propounded to them, decisions. Vide Inst. 1, 2, 8 Dig. 1, 2, 2.

DECLARANT. One who makes a declaration. Vide Declarationis.

DECLARATION, pleading. A declaration is a specification, in a methodical and logical form, of the circumstances which constitute the plaintiff's cause of action. 1 Chit. Pl. 248; Co. Litt. 17, a, 303, a; Bac. Abr. Pleas, B; Com. Dig. Pleader, C 7; Lawes on Pl. 35; Steph Pl. 36; 6 Serg. & Rawle, 28. In real actions, it is most properly called the count; in a personal one, the declaration. Steph. Pl. 36 Doct. Pl. 83; Lawes, Plead. 33; see P. N. B. 16, a, 60, d. The latter, however, is now the general term; being that commonly used when referring to real and personal actions without distinction. 3 Bouv. Inst. n. 2815.

2. The declaration in an action at law answers to the bill in chancery, the libel of the civilians, and the allegation of the ecclesiastical courts.

3. It may be considered with reference, 1st. To those general requisites or qualities which govern the whole declaration; and 2d. To its form, particular parts, and requisites.

4. − 1. The general requisites or quali− ties of a declaration are first, that it correspond with the process. But, according to the present practice of the courts, oyer of the writ cannot be craved; and a variance between the writ and declaration cannot be pleaded in abatement. 1 Saund. 318; a.

5. − Secondly. The second general requisite of a declaration is, that it contain a statement of all the facts necessary in point of law, to sustain the action, and no more. Co. Litt. 303, a; Plowd. 84, 122. See 2 Mass. 863;

Cowp. 682; 6 East, R. 422 5 T. R. 623; Vin. Ab. Declarations.

6. − Thirdly. These circumstances must be stated with certainty and truth. The certainty necessary in a declaration is, to a certain intent in general, which should pervade the whole declaration, and is particularly required in setting forth, 1st. The parties; it must be stated with certainty who are the parties to the suit, and therefore a declaration by or against "C D and Company," not being a corporation, is insufficient. See Com. Dig. Pleader, C I 8 1 Camp. R. 446 I T. R. 508; 3 Caines, R. 170. 2d. The time; in personal actions the declaration must, in general, state a time when every material or traversable fact happened; and when a venue is necessary, time must also, be mentioned. 5 T. R. 620; Com. Dig. Plead. C 19; Plowd. 24; 14 East, R. 390.; The precise time, however, is not material; 2 Dall. 346; 3 Johns. R. 43; 13 Johns. R. 253; unless it constitutes a material part of the contract declared upon, or whlere the date, &c., of a written contract or record, is averred; 4 T. R. 590 10 Mod. 313 2 Camp. R. 307, 8, n.; or, in ejectment, in which the demise
must be stated to have been made after the title of the lessor of the plaintiff, and his right of entry, accrued. 2 East, R. 257; 1 Johns. Cas. 283. 3d. The Place. See Venue. 4th. Other circumstances necessary to maintain the action.

7. − 2. The parts and particular requisites of a declaration are, first, the title of the court and term. See 1 Chit. Pl. 261, et seq.

8. − Secondly. The venue. Immediately after tše title of the declaration follows the statement in the margin of the venue, or county in which the facts are alleged to have occurred, and in which the cause is tried. See Venue.

9. − Thirdly. The commencement. What is termed the commencement of the declaration follows the venue in the margin, and precedes the more circumstantial statement of the cause of action. It contains a statement, 1st. Of the names of the parties to the suit, and if they sue or be sued in another right, or in a political capacity, (as executors, assignees, qui lam, &c.) of the character or right in respect of which they are parties to the suit. 2d. Of the mode in which the defendant has been brought into court; and, 3d. A brief recital of the form of action to be proceeded in. 1 Saund. 318, Id. 111, 112; 6 T. R. 130.

10. Fourthly. The statement of the cause (if action, in which all the requisites of certainty before mentioned must be observed, necessarily varies, according to the circumstances of each particular case, and the form of action, whether in assumpsit, debt, covenant, detinue, case, trover, replevin or trespass.

11. Fifthly. The several counts. A declaration may consist of as many counts as the case requires, and the jury may assess entire or distinct damages on. all the counts; 3 Wils. R. 185; 2 Bay, R. 206; and it is usual, particularly in actions of assumpsit, debt on simple contract, and actions on the case, to set forth the plaintiff’s cause of action in various shapes in different counts, so that if the plaintiff fail in proof of one count, he may succeed in another. 3 Bl. Com. 295.

12. − Sixthly. The conclusion. In personal and mixed actions the declaration should conclude to the damage of the plaintiff; Com. Dig. Pleader, C 84; 10 Co. 116, b. 117, a.; unless in scire facias and in penal actions at the suit of a common informer.

13. − Seventhly. The profert and pledges. In an action at the suit of an executor or administrator, immediately after the conclusion to the damages, &c., and before the pledges, a profert of the letters testamentary or letters of administration should be made. Bac. Abr. Executor, C; Dougl. 6, in notes. At the end of the declaration, it is usual to add the plaintiff is common pledges to prosecute, John Doe and Richard Roe.

14. A declaration may be general or special; for example, in debt or bond, a declaration counting on the penal part only, is general; when it sets out both the penalty and the condition, and assigns the breach, it is special. Gould on Pl. c. 4, _50. See, generally, Bouv. Inst. Index, h. t. 1 Chit. Pl. 248 to 402; Lawes, Pl. Index) h. t.; Arch. Civ. Pl. −index, h. t.; Steph. Pl. h. t.; Grab. Pr. h. t.; Com. Dig. Pleader, h. t.; Dane’s Ab. h. t.; United States Dig. Pleadings ii.

DECLARATION OF INDEPENDENCE. This is a state paper issued by the congress of the United States of America, in the name and by the authority of the people, on the fourth day of July, 17 76, wherein are set forth:

2. − 1. Certain natural and unalienable rights of man; the uses and purposes of governments the right of the people to institute or to abolish them; the sufferings of the colonies, and their right to withdraw from the tyranny of the king of Great Britain.

3. −2. The various acts of tyranny of the British Icing.

4. − 3. The petitions for redress of these injuries, and the refusal. to redress them; the recital of an appeal to the people of "Great Britain, and of their being deaf to the voice of justice and consanguinity.

5. − 4. An appeal to the Supreme Judge of the world for the rectitude of the intentions of the representatives.

6. − 5. A declaration that the United Colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is and ought to be dissolved.

7. − 6. A pledge by the representatives to each other, of their lives, their fortunes, and their sacred honor.

8. The effect of this declaration was the establishment of the government of the United States as free and independent) and thenceforth the people of Great Britain have been held, as the rest of mankind, enemies in war, in peace friends.

DECLARATION OF lNTENTION. The act of an alien, who goes before a court of record, and in a forma manner declares that it is, bona fide, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whereof he may at the time be a citizen or subject. Act of Congress of April 14, 18O2, s. 1.

2. This declaration must, in usual cases, be made at least three years before his admission. Id. But there are numerous exceptions to this rule. See Naturalization.

DECLARATION OF TRUST. The act by which an individual acknowledges that a property, the title of which he holds, does in fact belong to another, for whose use he holds the same. The instrument in which the acknowledgment is made, is also called a declaration of trust; but such a declaration is not always in writing, though it is highly proper it should be so. Will. on Trust, 49, note y; Sudg. on Pow. 200. See Merl. Rep. Declaration au profit d'un tiers.

DECLARATION OF WAR. An act of the national legislature, in which a state of war is declared to exist between the United States and some other nation.

2. This power is vested in congress by the constitution, art. 1, s. 8. There is no form or ceremony necessary, except the passage of the act. A manifesto, stating the causes of the war, is usually publishied, but war exists as soon as the act takes effect. It was formerly usual to precede hostilities by a public declaration communicated to the enemy, and to send a herald to demand satisfaction. Potter, Antiquities of Greece, b. 3, c. 7; Dig. 49, 15, 24. But that is not the practice of modern times. In some countries, as England, the, power of declaring war is vested in the king, but he has no power to raise men or money to carry it on, which renders the right almost nugatory.

4. The public proclamation of the government of a state, by which it declares itself to be at war with a foreign power, which is named, and which forbids all and every one to aid or assist the common enemy, is also called a declaration of war.

DECLARATIONS, evidence. The statements made by the parties to a transaction, in relation to the same.

2. These declarations when proved are received in evidence, for the purpose of illustrating the peculiar character and circumstances of the transaction. Declarations are admitted to be proved in a variety of cases.

3. − 1. In cases of rape, the fact that the woman made declarations in relation to it, soon after the assault took place, is evidence; but the particulars of what she said cannot be heard. 2 Stark; N. P. C. 242; S. C. 3 E. C. L. R. 344. But it is to be observed that these declarations can be used only to corroborate her testimony, and cannot be received as independent evidence; where, therefore, the prosecutrix, died, these declarations could not be received. 9 C. & P. 420; S. C. 38 Eng. C. L. R. 173; 9 C. & P. 471; S. C. 38 E. C. L. It. 188.

4. − 2. When more than one person is concerned in the commission of a crime, as in cases of riots, conspiracies, and the like, the declarations of either of the parties, made while acting in the common design, are evidence against the whole; but the declarations of one of the rioters or conspirators, made after the accomplishment of their object, and when they no longer acted together, are evidence only against the party making them. 2 Stark. Ev. 235 2
Russ. on Cr. 572 Rosc. Cr. Ev. 324; 1 Breese, Rep. 269.

5. In. civil cases the declarations of an agent, made while acting for his principal, are admitted in evidence as explanatory of his acts; but his confessions after he has ceased to, act, are not evidence. 4. S. R. 321.

6. − 3. To prove a pedigree, the declarations of a deceased member of the family are admissible. Vide Hearsay, and the cases there cited.

7. − 4. The dying declarations of a man who has received a mortal injury, as to the fact itself, and the party by whom it was committed, are good evidence; but the party making them must be under a full consciousness of approaching death. The declarations of a boy between ten and eleven years of age, made under a consciousness of approaching death, were received in evidence on the trial of a person for killing him, as being declarations in articulo mortis. 9 C. & P. 395; S. C. 38 E. C. L. R. 168. Evidence of such declarations is admissible only when the

death of the deceased is the subject of the charge, and the circumstances of the death the subject of the dying declarations. 2 B. & C. 605; S. C. 9 E. C. L. R. 196; 2 B. & C. 608; S. C. 9 E. C. L. R. 198; 1 John. Rep. 159; 15 John. R. 286; 7 John. R. 95 But see contra, 2 Car. Law Repos. 102. Vide Death bed, or Dying declarations. 3 Bouv. Inst. n. 3071.

DECLARATORY. Something which explains, or ascertains what before was un−
certain or doubtful; as a declaratory statute, which is one passed to put an end to a doubt as to what the law is, and which declares what it is, and what it has been. 1 Bl. Com. 86.

TO DECLARE. To make known or publish. By tho constitution of the United States, congress have power to declare war. In this sense the word, declare, signifies, not merely to make it known that war exists, but also to make war and to carry it on. 4 Dall. 37; 1 Story, Const. _428; Rawle on the Const. 109. In pleading, to declare, is the act of filing a declaration.

DECOCTION, med. jurisp. The operation of boiling certain ingredients in a fluid, for the purpose of extracting the parts soluble at that temperature. Decoction also means the product of this operation.

2. In a case in which the indictment charged the prisoner with having administered to a woman a decoction of a certain shrub called savin, it appeared that the prisoner had administered an infusion (q. v.) and not a decoction; the prisoner's counsel insisted that he was entitled to an acquittal, on the ground that the medicine was misdescribed, but it was held that infusion and decoction are ejusdem generis, and that the variance was immaterial. 3 Camp. R. 74, 75.

DECONFES, canon law in France. Formerly those persons who died without confession were so called; whether they refused to confess or whether they were criminals to whom the sacrament was refused. Droit Canon, par M. L'Abbe Andre. Dupin, Gloss. to Loisel's Institutes, says, Le deconfes est celui qui meurt sans confession et sans testament car l'un n'alloit point sans l'autre. See Intestate.

DECORUM. Proper behaviour; good order.

2. Decorum is requisite in public places, in order to permit all persons to enjoy their rights; for example, decorum is indispensable in church, to enable those assembled, to worship. If, therefore, a person were to disturb the congregation, it would be lawful to put him out. The same might be done in case of a funeral. 1 Mod. 168; 1 Lev. 196 2 Kebl. 124. But a request to desist should be first made, unless, indeed," when the necessity of the case would render such precaution impossible. In using force to restore order and decorum, care must be taken to use no more than is necessary; for any excess will render the party using it guilty of an assault and battery. Vide Battery.

DECOY. A pond used for the breeding and maintenance of water−fowl. 11 Mod. 74, 130; S. C. 3 Salk. 9; Holt, 14 11 East, 571.

DECREE, practice. The judgment or sentence of a court of equity.

2. It is either interlocutory or final. The former is given on some plea or issue arising in the cause, which does not decide the main question; the latter settles the matter in dispute, and a final decree has the same effect as a judgment at law. 2 Madd. Ch. 462; 1 Chan. Cas. 27; 2 Vern. 89; 4 Bro. P. C. 287.; Vide 7r−Vin. Ab. 394; 7 Com. Dig. 445; 1 Supp. to Ves. Jr. 223 Bouv. Inst. Index, h. t.

DECREE, legislation. In some countries as in France, some acts of the legislature, or of the sovereign, which have the force of law, are called decrees; as, the Berlin and Milan decrees.

DECREE ARBITRAL, Scotch law. A decree made by arbitrators chosen by the parties; an award. 1 Bell's Com. 643.

DECREE OF REGISTRATION, Scotch law. A proceeding by which the creditor has immediate execution; it is somewhat like a warrant of attorney to confess judgment. 1 Bell's Com. B. 1, c. 1, p. 4.

DECRETAL ORDER. Chancery practice. An order made by the court of chancery, upon a motion or petition, in the nature of a decree. 2 Dan. Ch. Pr. 637.

DECRETALS. eccles. law. The decretals are canononical epistles, written by the pope alone, or by the pope and cardinals, at the instance or suit of some one or more persons, for the ordering and determining some matter in. controversy, and have the authority of a law in themselves.

2. The decretals were published in three volumes. The first volume was collected by Raymundus Barcinius, chaplain to Gregory IX., about the year 1231, and published by him to be read in schools, and used in the ecclesiastical courts. The second volume is the work of Boniface VIII compiled about the year 1298, with additions to and alterations of the ordinances of his predecessors. The third volume is called the Clementines,

because made by Clement V., and was published by him in the council of Vienna, about the year 1308. To these may be added the Extravagantes of John XXII. and other bishops of Rome, which, relatively to the others, are called Novelle Constitutiones. Ridley's View, &c. 99, 100,; 1 Fournel, Hist. des Avocats, 194−5.

3. The false decretals were forged. in the names of the early bishops of Rome, and first appeared about A. D. 845−850. The author of them is not known. They are mentioned in a letter written in the name of the council of Quiercy, by Charles the Bald, to the bishops and lords. of France. See Van Espen Fleury, Droit de Canon, by Andre.

DEDI, conveyancing. I have given. This word amounts to a warranty in law, when it is in a deed; for example, if in a deed it be said, I have given, &c., to A B, this is a warranty to him and his heirs. Brooke, Abr. Guaranties, pl. 85. Yet the warranty wrought by this word is a special warranty, and extendeth to the heirs of the feoffee during the life of the donor only. Co. Litt. 884, b. Vide Concessi.

DEDICATION. Solemn appropriation. It may be expressed or implied.

2. An express dedication of property to public use is made by a direct appropriation of it to such use, and it will be enforced. 2 Peters, R. 566; 6 Hill, N. Y. Rep. 407.

3. But a dedication of property to public or pious uses may be implied from the acts of the owner. A permission to the public for the space of eight or even six years, to use a street without bar or impediment, is evidence from which a dedication to the public may be inferred. 2 Bouv. Inst. n. 1631; 11 East, R. 376; 12 Wheat. R. 585; 10 Pet. 662; 2 Watts, 23; 1 Whart. 469; 3 Verm, 279; 6 Verm. 365; 7 Ham. part 2, 135; 12 Wend. 172; 11 Ala. R. 63, 81; 1 Spencer, 86; 8 Miss. R. 448 5 Watts & S. 141; Wright, 150; 6 Hill, 407 24 Pick. 71; 6 Pet. 431, 498 9 Port.,527; 3 Bing. 447; sed vide 5 Taunt. R . 125. Vide Street, and the following authorities: 3 Kent, Com. 450; 5 Taunt. 125 5 Barn. & Ald. 454: 4 Barn. & Ald. 447; Math. Pres. 833. As to what shall amount to a dedication of an invention to public use, see 1 Gallis. 482; 1 Paine's C. C. R. 345; 2. Pet. R. 1; 7 Pet. R. 292; 4 Mason, R. 1018. See Destination.

DEDIMUS, practice. The name of a writ to commission private. persons to do some act in the place of a judge; as, to administer an oath of office to a justice of the peace, to examine witnesses, and the like. 4 Com. Dig. 319; 3 Com. Dig. 359; Dane's Ab. Index, h. t. Rey, in his Institutions Judiciaires, de l'Angleterre, tom. 2, p. 214, exposes the absurdity of the name given to this writ; he says it is applicable to every writ which emanates from the same authority; dedimus, we have given.

DEDIMUS POTESTATEM DE ATTORNO FACIENCDO. The name of a writ which was formerly issued by authority of the crown in England to authorize an attorney to appear for a defendant.

2. By statute of Westminster 2, 13 Edw. I. c. 10, all persons impleaded may make an attorney to sue for them in all pleas moved by or against them, in the superior courts there enumerated. 3 Mann. & Gran. 184, note.

DEED, conveyancing, contracts. A writing or instrument, under seal, containing some contract or agreement, and which has been delivered by the parties. Co. Litt. 171; 2 Bl. Com. 295; Shep. Touch. 50. This applies to all instruments in writing, under seal, whether they relate to the conveyance of lands, or to any other matter; a bond, a single bill, an agreement in writing, or any other contract whatever, when reduced to writing, which writing is sealed and delivered, is as much a deed as any conveyance of land. 2 Serg. & Rawle, 504; 1 Mood. Cr, Cas. 57; 5 Dana, 365; 1 How. Miss. R. 154; 1 McMullan, 373. Signing is not necessary at common law to make a deed. 2 Ev. Poth. 165; 11 Co. Rep. 278 6 S. & R. 311.

2. Deed, in its more confined sense, signifies a writing, by which lands, tenements, and hereditaments are conveyed, which writing is sealed and delivered by the parties.

3. The formal parts of a deed for the conveyance of land are, 1st. The premises, which contains all that precedes the habendum, namely, the date, the names and descriptions of the parties, the recitals, the consideration, the receipt of the same, the grant, the full description of the thing granted, and the exceptions, if any.

4. − 2d. The habendum, which states that estate or interest is granted by the deed this is sometimes, done in the premises.

5. − 3d. The tenendum. This was formerly used to express the tenure by which the estate granted was to be held; but now that all freehold tenures have been converted into socage, the tenendum is of no use and it is therefore joined to the habendum, under the formula to have and to hold.

6th. The redendum is that part of the deed by which the grantor reserves something to himself, out of the thing granted, as a rent, under the following formula, Yielding and paying.

7. − 5th. The conditions upon which the grant is made. Vide Conditions.

8. − 6th. The warranty, is that part by which the grantor warrants the title to the grantee. This is general when the warrant is against all persons, or special, when it is only against the grantor, his heirs, and those claiming under him. See Warranty.

9. − 7th. The covenants, if any; these are inserted to oblige the parties or one of them, to do something beneficial to, or to abstain from something, which, if done, might be prejudicial to the other.

10. − 8th. The conclusion, which mentions the execution and the date, either expressly, or by reference to the beginning.

11. The circumstances necessarily attendant upon a valid deed, are the following: 1. It must be written or printed on parchment or paper. Litt. 229, a; 2 Bl. Com. 297. 2. There must be sufficient parties. 3. A proper subject− matter which is the object of the grant. 4. A. sufficient consideration. 5. An agreement properly set forth. 6. It must be read, if desired. 7. It must be signed and sealed. 8. It must be delivered. 9. And attested by witnesses. 10. It should be properly acknowledged before a competent officer.

11. It ought to be recorded.

12. A deed may be avoided, 1. By alterations made in it subsequent to its execution, when made by the party himself, whether they be material or immaterial, and by any material alteration, made even by a stranger. Vide Erasure; Interlineation.

2. By the disagreement of those parties whose concurrence is necessary; for instance, in the case of a married woman by the disagreement of her hushand. 3. By the judgment of a competent tribunal.

13. According to Sir William Blackstone, 2 Com. 313, deeds may be consi− dered as (1), conveyanees at common law, original and derivative. 1st. The original are, 1. Feoffment. 2. Gift. 3. Grant. 4. Lease. 5. Exchange; and 6. Partition. 2d. Derivative, which are 7. Release. 8. Confirmation. 9. Surrender. 10. Assignment 11. Defeasance. (2). Conveyances which derive their force by virtue of the statute of uses; namely, 12. Covenant to stand seised to uses. 13. Bargain and sale of lands. 14. Lease and release. 15. Deed to lead and declare uses. 16. Deed of revocation of uses.

14. The deed of, bargain and sale, is the most usual in the United States. Vide Bargain and Sale. Chancellor Kent is of opinion that a deed would be perfectly competent in any part of the United States, to convey the fee, if it was to the following effect: "I, A, B, in consideration of one dollar to me paid, by C D, do bargain and sell , (or in some of the states, grant) to C D, and his heirs, (in New York, Virginia, and some other states, the words, and his heirs may be omitted,) the lot of land, (describing it,) witness my hand and seal," &c. 4 Kent, Com. 452. Vide, generally, Bouv. Inst. Index, h. t.; Vin. Abr. Fait; Com. Dig. Fait; Shep. Touch. ch. 4; Dane's Ab. Index, h. t.; 4 Cruise's Dig. passim.

15. Title deeds are considered as part of the inheritance and pass to the heir as real estate. A tenant in tail is, therefore, entitled to them; and chancery will, enable him to get possession of them. 1 Bro. R. 206; 1 Ves. jr. 227;11 Ves. 277; 15 Ves. 173. See Hill. Ab. c. 25; 1 Bibb, R. 333: 3 Mass. 487; 5 Mass. 472.

16. The cancellation, surrender, or destruction of a deed of conveyance, will not divest the estate which has passed by force of it. 1 Johns. Ch. Rep. 417 2 Johns. Rep. 87. As to the effect of a redelivery of a deed, see 2 Bl. Com. 308 2 H. Bl. 263, 264.

DEED POLL, contracts. A deed made by one party only is not indented, but polled or shaved quite even, and is, for this reason, called a deed poll, or single deed. Co. Litt. 299, a.

2. A deed poll is not, strictly speaking, an agreement between two persons; but a declaration of some one particular person, respecting an agreement made by him with some other person. For example, a feoffment from A to B by deed poll, is not an agreement between A and B, but rather a declaration by A addressed to all mankind, informing them that he thereby gives and enfeoffs B of certain land therein described.

3. It was formerly called charta de una parte, and, usually began with these words, Sciant praesentes et futuri quod ego A, &c.; and now begins, "Know all men by these presents, that I, A B, have given, granted, and enfeoffed, and by these presents do give, grant and enfeoff," &c. Cruise, Real Prop. tit. 32, c. 1, s. 23.

DEFALCATION, practice, contracts. The reduction of the claim of one of the contracting parties against the other, by deducting from it a smaller claim due from the former to the latter.

2. The law operates this reduction , in certain cases, for, if the parties die or are insolvent, the balance between them is the only claim; but if they are solvent and alive, the defendant may or may not defalcate at his choice. See Set off. For the etymology of this word, see Bracken. Law Misc. 186; 1 Rawle's R. 291; 3 Binn. R. 135.

3. Defalcation also signifies the act of a defaulter. The bankrupt act of August 19, 1841, (now repealed), declares

that a person who owes debts which have been created in consequence of a defalcation as a public officer, or as executor, administrator, guardian or trustee, or while acting in any other fiduciary capacity, shall not have the benefit of that law.

DEFAMATION, tort. The speaking slanderous words of a person so as, de bona fama aliquid detrahere, to hurt his good fame. Vide Slander.

2. In the United States, the remedy for defamation is by an action on the case, where the words are slanderous.

3. In England, besides the remedy by action, proceedings may be instituted in the ecclesiastical court for redress of the injury. The punishment for defamation, in this court, is payment of costs and penance enjoined at the discretion of the judge. When the slander has been privately uttered, the penance may be ordered to be performed in a private place; when publicly uttered, the sentence must be public, as in the church of the parish of the defamed party, in time of divine service,, and the defamer may be required publicly to pronounce that by such words, naming them, as set forth in the sentence, he had defamed the plaintiff, and, therefore, that he begs pardon, first, of God, and then of the party defamed, for uttering such words. Clerk's Assist. 225; 3 Burn's Eccl. Law, Defamation, pl. 14; 2 Chit. Pr. 471 Cooke on Def.

DEFAULT. The neglect to perform a legal obligation or duty; but in technical language by default is often understood the non−appearance of the defendant within the time prescribed by law, to defend himself; it also signifies the non−appearance of the plaintiff to prosecute his claim.

2. When the plaintiff makes default, he may be nonsuited; and when the defendant makes default, judgment by default is rendered against him. Com. Dig. Pleader, E 42 Id. B 11. Vide article Judgment by Default, and 7 Vin. Ab. 429; Doct. Pl. 208 Grah. Pr. 631. See, as to what will excuse or save a default, Co. Litt. 259 b.

DEFAULT, contracts, torts. By the 4th section of the English statute of frauds, 29 Car. H., c. 3, it is enacted that "no action shall be brought to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the agreement," &c., "shall be in writing," &c. By default under this statute is understood the non−performance of duty, though the same be not founded on a contract. 2 B. & A. 516.

DEFAULTER, com. law. One who is deficient in his accounts, or falls in making his accounts correct.

DEFEASANCE, contracts, conveyancing. An instrument which defeats the force or operation of some other deed or estate. That, which in the same deed is called a condition, in another deed is a defeasance.

2. Every defeasance must contain proper words, as that the thing shall be void. 2 Salk. 575 Willes, 108; and vide Carth. 64. A defeasance must be made in eodem modo, and by, matter as high as the thing to be defeated; so that if one be by deed) the other must also be by deed. Touchs. 397.

3. It is a general rule, that the defeasance shall be a part, of the same transaction with the conveyance; though the defeasance may be dated after the deed. 12 Mass. R. 13 Pie P. 413 1 N. 11. Rep. 41; but see 4 Yerg. 57, contra. Vide Bouv. Inst. Index, h. t.; Vin. Ab. h. t.; Com. Dig. h. t.; Id. Pleader, 2 W 35, 2 W 37; Lilly's Reg. h. t.; Nels. Ab. h. t.; 2 Saund. 47 n, note 1; Cruise, Dig. tit. 32, c. 7,, s. 25; 18 John. R. 45; 9 Wend. R. 538; 2 Mass. R. 493.

DEFEASIBLE. What may be undone or annulled.

DEFECT. The want of something required by law.

2. It is a general rule that pleadings shall have these two requisites; 1. A matter sufficient in law. 2. That it be deduced and expressed according to the forms of law. The want of either of these is a defect.

3. Defects in matters of substance cannot be cured, because it does not appear that the plaintiff is entitled to recover; but when the defects are in matter of form, they are cured by a verdict in favor of the party who committed them. 3 Bouv. Inst. n. 3292; 2 Wash. 1; 1 Hen. & Munf. 153; 16 Pick. 128, 541; 1 Day, 315; 4 Conn, 190; 5 Conn. 416; 6 Conn. 176; 12 Conn. 455; 1 P. C. C. R. 76; 2 Green, 133; 4 Blackf. 107; 2 M'Lean, 35; Bac. Ab. Verdict, X.

DEFENCE, torts. A forcible resistance of an attack by force.

2. A man is justified, in defending his person, that of his wife, children, and servants, and for this purpose he may use as much force as may be necessary, even to killing the assailant, remembering that the means used must always be proportioned to the occasion, and an excess becomes, itself, an injury.

3. A man may also repel force by force in defence of his personal property, and even justify homicide against one Who manifestly intends or endeavors by violence or surprise to commit a known felony, as robbery.

4. With respect to the defence or protection of the possession of real property, although it is justifiable even to kill a person in the act of attempting to commit a forcible felony, as burglary or arson, yet this justification can only take place when the party in possession is wholly without fault. 1 Hale, 440, 444; 1 East, P. C. 259, 277.

When a forcible attack is made upon the dwelling−house of another, without any felonious intent, but barely to commit a trespass, it is in general lawful to oppose force by force, when the former was clearly illegal. 7 Bing. 305; S. C. 20 Eng. C. L. Rep. 139. Vide, generally, Ham. N. P. 136, 151 1 Chit. Pr. 589, 616; Grot. lib. 2, c. 1 Rutherf. Inst. B. 1, c. 16.

DEFENCE, pleading, practice. It is defined to be the denial of the truth or validity of the complaint, and does not signify a justification. It is a general assertion that the plaintiff has no ground of action, which assertion is afterwards extended and maintained in the plea. 3 Bl. Com. 296; Co. Litt. 127. It is similar to the contestatio litis of the civilians.

2. Defence is of two descriptions; first half defence, which is as follows, "venit et defendit vim et injuriam, et dicit," &c.; or secondly, full defence, "venit et defendit vim et injuriam, quando," &c. meaning "quando et ubi curia consideravit," (or when and where it shall behoove him,) " et damna et quicquid quod ipse defendere debet et dicit," &c. Co. Litt. 127, b; Bac. Abr. Pleas, D Willis, 41.

3. In strictness, the words quando, &c. ought not to be added when only half defence is to be made; and after the words "venit et defendit vim et injuriam," the subject matter of the plea should immediately be stated. Gilb. C. P. 188; 8 T. R. 6 3 2; 3 B. & P. 9, n. a.

4. It has, however, now become the practice in all cases, whether half or full defence be intended, to, state it a's follows: "And the said C D, by M N, his attorney, comes and defends the wrong, (or in trespass, force) and injury, when, &c. and says," which will be considered only as half defence in cases where such defence should be made, and as full defence where the latter is necessary. 8 T. R. 633; Willis, 41 3 B. & P. 9; 2 Saund. 209, c.

5. If full defence were made expressly by the words "when and where it shall behoove him," and "the damages and whatever else he ought to defend," the defendant would be precluded from pleading to the jurisdiction or in abatement, for by defending when and where it shall behoove him, the defendant acknowledges the jurisdiction of the court and by defending the damages he waives all. exception to the person of the plaintiff. 2 Saund. 209, c.; 3 Bl. Com. 297 Co. Litt. 127, b Bac. Abr. Pleas, D.

6. Want of defence being only matter of form, the omission is aided by general demurrer. 3 Salk. 271. See further, 7 Vin. Abr. 497; 1 Chit. Pl. 410; Com. Dig. Abatement, I 16; Gould. on Pl. c. 2, s. 6−15; Steph. Pl. 430.

7. In another sense, defence signifies a justification; as, the defendant has made a successful defence to the charge laid in the indictment.

8. The Act of Congress of April 30, 1790, 1 Story, L. U. S. 89, acting upon the principles adopted in perhaps all the states, enacts, _28, that every person accused and indicted of the crime of treason, or other capital offence, shall "be allowed and admitted to make his full defence by counsel learned in the law; and the court before whom such person shall be tried, or some judge thereof, shall, and they are hereby authorized and requited, immediately upon his request, to assign to such person such counsel, not exceeding two, as such person shall desire, to whom such counsel shall have free access, at all seasonable hours; and every such person or persons, accused or indicted of the crimes aforesaid, shall be allowed and admitted in his said defence, to make any proof that he or they can produce, by lawful witness or witnesses, and shall have the like process of the court where he or they shall be tried, to compel his or their witnesses to appear at his or their trial, as is usually granted to compel witnesses to appear on the prosecution against them."

9. Defences in equity may be classed in two divisions, namely into dilator defences, (q. v.) and into those which are peremptory. Matters of peremptory or permanent defences may be also divided into two sorts, first, those where the plaintiff never had any right to institute the suit; for example: 1. That the plaintiff had not a superior right to the defendant. 2. That the defendant has no interest. 3. That there is no privity between the plaintiff and defendant, or any right to sustain the suit. Secondly, those that insist that the original right, if any, is extinguished or determined; as, 1. When the right is determined by the act of the parties; or, 2. When it is determined by operation of law. 4 Bouv. Inst. n. 4199, et seq.; 1 Montag. Eq. Pl. 89. See Dilatory Defence; Merits.

TO DEFEND. To forbid. This word is used in some old English statutes in the sense it has in French, namely, to forbid. 5 Pic. 2, c. Lord Coke uses the word in this sense: it is defended by law to distrain on the highway." Co Litt. 160, b. 161 a. In an old work entitled , Legends, printed by Winkin de Worde, in 1527, fo. 96, we find examples of the use of the word in this sense, " He defended," (forbade) " to pay the wage," (tribute,) " for he said he was a king." " She wrote the obligation when she put her hand to the tree against the defence." (prohibition of God.)

2. In pleading, to defend is to deny; and the effect of the word "defends" is, that the defendant denies the right of

the plaintiff, or the force and wrong charged. Steph. Pl. 432.

3. In contracts, to defend is to guaranty; to agree to indemnify. In most conveyances of land the grantor covenants to warrant and defend. It is his duty, then, to prevent all persons against whom he defends, from doing any act which would evict him; when there is a mortgage upon the land, and the mortgagee demands possession or payment of the covenantee, and threatens suit, this is a breach of the covenant to defend, and for quiet enjoyment. 17 Mass.
R. 586.

DEFENDANT. A party who is sued in a personal action. Vide Demandant; Par− ties to Actions; Pursuer; and Com. Dig. Abatement, F; Action upon the case upon assumpsit, E, b; Bouv. Inst. Index, h. t.

2. At common law a defendant cannot have judgment to recoyer a sum of money of the plaintiff. But this rule is, in some cases, altered by the act of assembly in Pennsylvania, as by the. Act of 1705, for defalcation, by which he may sue out a sci. fac. on the record of a verdict for a sum found in his favor. 6 Binn. Rep. 175. See Account 6.

DEFENDANT IN ERROR. A party against whom a writ of error is sued out.

DEFENDER, canon law. The name by which the defendant or respondent is known in the ecclesiastical courts.

DEFENSIVE ALLEGATION. The defence or mode of propounding a defence in the spiritual courts, is so called.

DEFICIT. This Latin term signifies that something is wanting. It is used to express the deficiency which is discovered in the accounts of an accountant, or in the money in which he has received.

DEFINITE NUMBER. An ascertained number; the term is usually applied in op− position to an indefinite number.

2. When there is a definite number of corporators, in order to do a lawful act, a majority of the whole must be present; but it is not necessary they should, be unanimous; a majority of those present can, in general, perform the act. But when the corporators consist of an indefinite number, any number, consisting of a majority of those present, may do the act. 7 Cowen, R. 402 9 B. & Cr. 648, 851; 7 S. & 11. 517; Ang. & Am. on Corp. 281.

DEFINITION. An enumerition of the principal ideas of which a compound idea is formed, to ascertain and explain its nature and character; or it is that which denotes and points out the substance of a thing, to us. Ayliffe's Pand. 59.

2. A definition ought to contain every idea which belongs to the thing defined, and exclude all others.

3. A definition should be, 1st. Universal, that is, such that it will apply equally to all individuals of, the same kind. 2d. Proper, that is, such that it will not apply to any other individual of any other kind. 3d. Clear, that is, without any equivocal, vague, or unknown word. 4th. Short, that is, without any useless word, or any foreign to the idea intended to be defined.

4. Definitions are always dangerous, because it is always difficult to prevent their being inaccurate, or their becoming so; omnis definitio injure civili periculosa est, parum est enim, ut non subvertipossit.

5. All ideas are not susceptible of definitions, and many words cannot be defined. This inability is frequently supplied, in a considerable degree, by descriptions. (q. v.)

DEFINITIVE. That which terminates a suit a definitive sentence or judgment is put in opposition to an interlocutory judgment; final. (q. v.)

DEFLORATION. The act by which a woman is deprived of her virginity.

2. When this is done unlawfully, and against her will, it bears the name of rape, (q. v.) when she consents, it is fornication. (q. v.)

DE FORCIANT. One who wrongfully keeps the owner of lands and tenements out of the possession of them. 2 Bl. Com. 350.

DEFORCIARE. To withhold lands or tenements from the right owner. This is a word of art which cannot be supplied by any other word. Co. Litt. 331 b; 3 Tho. Co. Litt. 3; Bract. lib. 4, 238; Fleta, lib. c.

DEFORCEMENT, tort. In its most extensive sense it signifies the holding of any lands or tenements to which another person has a right; Co . Litt. 277; so that this includes, as well, an abatement, an intrusion, a disseisin, or a discontinuance, as any other species of wrong whatsoever, by which the owner of the freehold is kept out of possession. But, as contradistinguished from the former, it is only such a detainer, of the freehold, from him who has the right of property, as falls within none of the injuries above mentioned. 3 Bl. Com. 173; Archb. Civ. Pl. 13; Dane's Ab. Index, h. t.

DEFORCEMENT, Scotch law. The opposition given, or resistance made, to messengers or other officers, while

they are employed in executing the law.

2. This crime is punished by confiscation of movables, the one half to the king, and the other to the creditor at whose suit the diligence is used. Ersk. Pr. L. Scot. 4,4,32.

DEFUNCT. A term used for one that is deceased or dead. In some acts of assembly in Pennsylvania, such deceased person is called a decedent. (q. v.)

DEGRADATION, punishment, ecclesiastical law. A censure by which a clergy man is deprived of his holy orders, which he had as a priest or deacon.

TO DEGRADE, DEGRADING. To, sink or lower a person in the estimation of the public.

2. As a man's character is of great importance to him, and it is his interest to retain the good opinion of all mankind, when he is a witness, he cannot be compelled to disclose any matter which would tend to disgrace or degrade him, 13 How. St. Tr. 17, 334, 16 How. St. Tr. 161. A question having that tendency, however, may be asked, and, in such case, when the witness chooses to answer it, the answer is conclusive. 1 Phil. Ev. 269; R. & M. 383.

DEGREE, descents. This word is derived from the French degre, which is itself taken from the Latin gradus, and signifies literally, a step in a stairway, or the round of a ladder.

2. Figuratively applied, and as it is understood in law, it is the distance between those who are allied by blood; it means the relations descending from a common ancestor, from generation to generation, as by so many steps. Hence, according to some Lexicographers, we obtain the word, pedigree (q. v.) Par degrez, by degree, the descent being reckoned par degrez. Minshew. Each generation lengthens the line of descent one degree, for the degrees are only the generations marked in a line by small circles or squares, in which the names of the persons forming it are written. Vide Consanguinity;, Line; and also Ayliffe's Parergon, 209; Toull. Dr. Civ. Frau. liv. 3, t. 1, c. 3, n. 158; Aso & Man. Inst. B. 2, t. 4, c. 3, _1.

DEGREE, measures. In angular measures, a degree is equal to sixty minutes, or the thirtieth part of a sine. Vide Measure.

DEGREE, persons. By. degree, is understood the state or condition of a person. The ancient English statute of additions, for example, requires that in process, for the better description of a defendant, his state, degree, or mystery, shall be mentioned.

DEGREES, academical. Marks of distinction conferred on students, in testimony of their proficiency in arts and sciences. They are of pontifical origin. See 1 Schmidt's Thesaurus, 144; Vicat, ad voc. Doctores Minshew, Dict. ad voc Bacheler; Merl. Rep ad voc Universite; Van Espen, p. 1, tit. 10, c. Giaunone Istoria, di Napoli, lib. xi. c. 2, for a full account of this matter.

DEHORS. Out of; without. By this word is understood something out of the record, agreement, will, or other thing spoken of; something foreign to the matter in question.

DEI JUDICIUM. The judgment of God. This name was given to the barbarous and superstitious trial by ordeal.

DEL CREDERE, contracts. A del credere commission is one under which the agent, in consideration of an additional premium, engages to insure to his principal not only the solvency of the debtor, but the punctual discharge of the debt; and he is liable, in the first instance, without any demand from the debtor. 6 Bro. P. C. 287; Beawes, 429; 1 T. Rep. 112; Paley on Agency, 39.

2. If the agent receive the amount of sales, and remit the amount to the principal by a bill of exchange, he is not liable if it should be protested. 2 W. C. C. R. 378. See, also, Com. Dig. Merchant, B; 4 M. & S. 574.

DELAWARE. The name of one of the original states of the United States of America. For a time the counties of this state were connected with Pennsylvania, under the name of territories annexed to the latter. In 1703, a separation between them took place, and from that period clown to the Revolution, the territories were governed by a separate legislature of their own, pursuant to the liberty reserved to them by a clause of their original charter. 1 Story, Constitution, _127; 1 Votes of Assembly, 131, and part 2, p. 4, of Pennsylvania.

2. The constitution of this state was amended and adopted December 2, 1831. The powers of the government are divided into three branches, the legislative, the executive, and the judicial.

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

4. − 1. The senate is composed of three senators from each county; the number may be increased by the general assembly, two−thirds of each branch concurring, but the number of senators shall never be greater than one−half, nor less than two−thirds of the number of representatives. Art. 2, s. 3. The senators are chosen for four years by

the citizens residing in the several counties.

5. − 2. The house of representatives is composed of seven members from each county, but the general assembly, two−thirds of each branch concurring, may increase the number. The representatives are chosen for two years by the citizens residing in the several counties. Art. 2, s. 2.

6. − 2d. The supreme executive power of the state is vested in a governor, who is chosen by the citizens of the state. He holds his office during four years, from the third Tuesday in January next ensuing his election; and is not eligible a second time to the said office. Art. 3. Upon the happening of a vacancy, the speaker of the senate exercises the office, until a governor elected by the people shall be duly qualified. Art. 3, s. 14.

7. − 3d. The judicial power is vested in a court of errors and appeals,, a superior court, a court of chancery, an orphan's court, a court of oyer and terminer, a Court of general sessions of the peace and jail delivery, a register's court, justices of the peace, and such other courts as the general assembly, with the concurrence of two−thirds of all the members of both houses shall, from time to time, establish. Art. 6.

DELAY, civil law. The time allowed either by law or by agreement of the parties to do something.

2. The law allows a delay, for a party who has been summoned to appear, to make defence, to appeal; it admits of a delay during which and action may be brought, certain rights exercised, and the like.

3. By the agreement of the parties there may be a delay in the payment of a debt, the fulfilment of a contract, &c. Vide Code, 3, 11, 4; Nov. 69, c. 2 Merl. Rep. h

DELECTUS PERSONAE. This phrase, which literally signifies the choice of a person, is applied to show that partners have the right to select their copartners; and that no set of partners can take another person into the partnership, without the consent of each of the partners. Story on Partn. 6 Colly. on Partn. 4; 1 Swanst. 508; 2 Bouv. Inst. n. 1443.

DELEGATE. A person elected by the people of a territory of the United States, to congress, who has a seat in congress, and a right of debating, but not of voting. Ordinance of July, 13, 1787, 3 Story's L. U. S. 2076.

2. The delegates from the territories of the United States are entitled to send and receive letters, free of postage, on the same terms and conditions as members of the senate and house of representatives of the United States; and also to the same compensation as is allowed to members of the senate and house of representatives. Act of February 18, 1802, 2 Story, L. U. S. 828.

3. A delegate is also a person elected to some deliberative assembly, usually one for the nomination of officers.

4. In contracts, a delegate is one who is authorized by another in the name of the latter; an attorney.

DELEGATION, civil law. It is a kind of novation, (q. v.) by which the original debtor, in order to be liberated from his creditor, gives him a third person, who becomes obliged in his stead to the creditor, or to the person appointed by him.

2. It results from this definition that a delegation is made by the concurrence of three parties, and that there may be a fourth. There must be a concurrence, 1. Of the party delegating, that is, the ancient debtor, who procures another debtor in his stead. 2. Of the party delegated, who enters into the obligation in the place of the ancient debtor, either to the creditor of to some other person appointed by him. 3. Of the creditor, who, in consequence of the obligation contracted by the party delegated, discharges the party delegating. Sometimes there intervenes a fourth party namely, the person indicated by the creditor in whose favor the person delegated becomes obliged, upon the indication of the creditor, and by the order of the person delegating. Poth. Ob. part. 3, c. 2, art. 6. See Louis. Code, 2188, 2189; 3 Wend. 66; 5 N. H. Rep. 410; 20 John. R. 76; 1 Wend. 164; 14 Wend. 116; 11 Serg. & Rawle, 179.

3. Delegation is either perfect or imperfect. It is perfect, When the debtor who makes the delegation, is discharged by the creditor. It is imperfect when the creditor retains his rigbts against the original debtor. 2 Duverg. n. 169. See Novation.

DELEGATION, contracts. The transfer of authority from one or more persons to one or more others.

2. In general, all persons sui juris may delegate to another authority to act for them, but to this rule there are exceptions; 1st. On account of the thing to be done; and 2d. Because the act is of a personal nature, and incapable of being delegated. 1. The thing to be done must be lawful; for an authority to do a thing unlawful, is absolutely void. 5 Co. 80. 2. Sometimes, when the thing to be done is lawful, it must be performed by the person obligated himself. Com. Dig. Attorney, C 3; Story, on Ag. _12.

3. When a bare power or authority has been given to another, the latter cannot in general delegate that authority

or any part of it to a third person, for the obvious reason that the principal relied upon the intelligence, skill and ability of his agent, and he cannot have the same confidence in a stranger. Bac. Ab. Authority, D; Com. Dig. Authority, C 3; 12. Mass. 241; 4 Mass. 597; 1 Roll. Ab. Authority, C 1, 15; 4 Camp. 183; 2 M. & Selw. 298, 301; 6 Taunt. 146; 2 Inst. 507.

4. To this general rule that one appointed as agent, trustee, and the like, cannot delegate his authority, there are exceptions: 1. When the agent is expressly authorized to make a substitution. 1 Liverm. on Ag. 54. 2. When the authority is implied, as in the following: cases: 1st. When by the laws such power is indispensable in order to accomplish the end proposed, as, for example, when goods are directed to be sold at auction, and the laws forbid such sales except by licensed auctioneers. 6 S. & R. 386. 2d. When the employment of such substitute is in the ordinary course of trade, as where it is the custom of trade to employ a ship broker or other agent for the purpose of procuring freight and the like . 2 M. & S. 301; 3 John. Ch. R. 167, 178; 6 S. & R. 386. 3d. When it is understood by the parties to be the mode in which the particular thing would be done. 9 Ves. 234; 3 Chit. Com Law, 206. 4th. When the powers thus delegated are merely mechanical in their nature. 1 Hill, (N. Y.) R. 501 Bunb. 166; Sugd. on Pow. 176.

5. As to the form of the delegation, it may be for general purposes, by a verbal or by a written declaration not under seal, or by acts and implications. 3 Chit. Com. Law, 5, 194, 195; 7 T. R. 350. But when the act to be done must be under seal, the delegation must also be under seal. Co. Litt. 48 b; 5 Binn. 613; 14 S. & R. 331 See Authority.

DELEGATION, legislation. It signifies the whole number of the persons who represent a district, a state, and the like, in a deliberative assembly; as, the delegation from Ohio, the delegation from the city of Philadelphia.

TO DELIBERATE. To examine, to consult, in order to form an opinion. Thus, a jury deliberate as to their verdict.

DELIBERATION, contracts, crimes. The act of the understanding, by which the party examines whether a thing proposed ought to be done or not to be done, or whether it ought to be done in one manner or another. The deliberation relates to the end proposed, to the means of accomplishing that end, or to both.

2. It is a presumption of law that all acts committed, are do−ne with due deliberation, that the party intended to do what he has done. But he may, show the contrary; in contracts, for example, he may show he has been taken by surprise; (q. v.) and when a criminal act is charged, he may prove that it Was an accident, and not with deliberation, that in fact there was no intention or will. See Intention; Will.

DELIBERATION. legislation. The council which is held touching some business, in an assembly having the power to act in relation to it.

2. In deliberative assemblies, it is presumed that each member will listen to the opinions and arguments of the others before he arrives at a conclusion.

DELICT, civil law. The act by which one person, by fraud or malignity, causes some damage or tort to some other. In its most enlarged sense, this term includes all kinds of crimes and misdemeanors, and even the injury which has been caused by another, either voluntarily or accidentally without evil intention; but more commonly by delicts are understood those small offences which are punislied by a small fine or a short imprisonment.

2. Delicts are either public or private; the public are those which affect the whole community by their hurtful consequences; the private is that which is directly injurious to a private individual. Inst. 4, 18; Id. 4, 1 Dig. 47, 1; Id. 48, 1.

3. A quasi−delict, quasi delictum, is the act of a person, who without malignity, but by an inexcusable imprudence, causes an injury to another. Poth. Ob. n. 116; Ersk. Pr. Laws of Scotl. B. 4, t. 4, s. 1.

DELINQUENT, civil law. He who has been guilty of some crime, offence or failure of duty.

DELIRIUM, med.jur. A disease of the mind produced by inflammations, particularly in fevers, and other bodily diseases.

2. It is also occasioned by intoxicating agents.

3. Delirium manifests its first appearance "by a propensity of the patient to talk during sleep, and a momentary forgetfulness of his situation, and of things about him, on waking from it. And after being fully aroused, however, and his senses collected, the mind is comparitively clear and tranquil, till the next slumber, when the same scene is repeated. Gradually the mental disorder becomes more intense, and the intervals between its returns of shorter duration, until they are scarcely, or not at all perceptible. The patient lies on his back, his eyes, if open, presenting a dull and listless look, and is almost constantly talking to himself in a low, muttering tone. Regardless of persons

or things around him and scarcely capable of recognizing them when aroused by his attendants, his mind retires within itself to dwell upon the scenes and events of the past, which pass before it in wild and disorderly array, while the tongue feebly records the varying impressions, in the form of disjointed, incoherent discourse, or of senseless rhapsody. In the delirium which occurs towards the end of chrome diseases, the discourse is often more coherent and continuous, though the mind is no less absorbed in its own reveries. As the disorder advances, the voice becomes more indistinct, the fingers are constantly picking at the bed−clothes, the evacuations are passed insensibly, and the patient is incapable of being aroused to any further effort of attention. In some cases, delirium is attended with a greater degree of nervous and vascular excitement, which more or less modifies the above−mentioned symptoms. The eyes are open, dry, and bloodshot, intently gazing into vacancy, as if fixed on some object which is really present to the mind of the patient; the skin is hotter and dryer; and he is more restless and intractable. He talks more loudly, occasionally breaking out into cries and vociferation, and tosses about in bed, frequently endeavoring to get up, though without any particular object in view." Ray, Med. Jur. _213.

4. "So closely does delirium resemble mania to the casual observer, and so important is it that they should be distinguished from each other, that it may be well to indicate some of the most common and prominent features of each. In mania, the patient recognizes persons and things, and is perfectly conscious of, and remembers what is passing around him. In delirium, he can seldom distinguish one person or thing from another, and, as if fully occupied with the images that crowd upon his memory, gives no attention to those that are presented from without. In delirium, there is an entire abolition of the reasoning power; there is no attempt at reasoning at all; the ideas are all and equally insane; no single train of thought escapes the morbid influence, nor does a single operation of the mind reveal a glimpse of its natural vigor and acuteness. In mania, however false and absurd the ideas may be, we are never at a loss to discover patches of coherence, and some semblance of logical sequence in the discourse. The patient still reasons, but he reasons incorrectly. In mania, the muscular power is not perceptibly diminished, and the individual moves about with his ordinary ability. Delirium is invariably attended with great muscular debility; and the patient is confined to bed, and is capable of only a momentary effort of exertion. In mania, sensation is not necessarily impaired and, in most instances, the maniac sees, bears, and feels with all his natural acuteness. In delirium, sensation is greatly impaired, and this avenue to the understanding seems to be entirely closed. In mania, many of the bodily functions are undisturbed, and the appearance of the patient might not, at first sight, convey the impression of disease. In delirium, every function suffers, and the whole aspect of the patient is indicative of discase. Mania exists alone and independent of any other disorder, while delirium is only a symptom or attendant of some other disease. Being a symptom only, the latter maintains certain relations with the −discase on which it depends; it is relieved when that is relieved, and is aggravated when that increases in severity. Mannia, though it undoubtedly tends to shorten life, is not immediately dangerous; whereas the disease on which delirium depends, speedily terminates in death, or restoration to health. Mania never occurs till after the age of puberty; delirium attacks all periods alike, from early childhood to extreme old age." Id. _216.

5. In the inquiry as to the validity of testamentary dispositions, it is of great importance, in many cases, to ascertain whether the testator labored under delirium, or whether he was of sound mind. Vide Sound mind; Unsound mind; 2 Addams, R. 441; 1 Addams, Rep. 229, 383; 1 Hagg. R. 577; 2 Hagg. R. 142; 1 Lee, Eccl. R. 130; 2 Lee, Eccl. R. 229; 1 Hag . Eccl. Rep. 256.

DELIRIUM TREMENS, med. jur. A species of insanity which has obtained this name, in consequence of the tremor experienced by the delirious person, when under a fit of the disorder.

2. The disease called delirium tremens or mania a potu, is well described in the learned work on the Medical Jurisprudence of Insanity, by Dr. Ray, _315, 316, of which the following is an extract: "it may be the immediate effect of an excess, or series of excesses, in those who are not habitually intemperate, as well as in those who are; but it most commonly occurs in habitual drinkers, after a few days of total abstinence from spirituous liquors. It is also very iable to occur in this latter class when laboring under other diseases, or severe external injuries that give rise to any degree of constitutional disturbance. The approach of the disease is generally indicated by a slight tremor and faltering of the hands and lower extremities, a tremulousness of the voice, a certain restlessness and sense of anxiety which the patient knows not how to describe or to account for, disturbed sleep, and impaired appetite. These symptoms having continued two or three days, at the end, of which time they have obviously increased in severity, the patient ceases to sleep altogether, and soon becomes delirious. At first, the delirium is not constant, the mind wandering during the night, but during the day, when its attention is fixed, capable of rational discourse. It is not long, however, before it becomes constant, and constitutes the most prominent feature

of the disease. This state, of watchfullness and delirium continues three or four days, when, if the patient recover, it is succeeded by sleep, which, at first appears in uneasy and irregular naps, and lastly in long, sound, and refreshing slumbers. When sleep does not supervene about this period, the, disease is fatal; and whether subjected to medical treatment, or left to itself, neither its symptoms nor duration are materially modified.

3. "The character of the delirium in this disease is peculiar, bearing a stronger resemblance to dreaming, than any other form of mental derangement. It would seem as if the dreams which disturb and harass the mind during the imperfect sleep that precedes the explosion of the disease, continue to occupy it when awake, being then viewed as realities, instead of dreams. The patient imagines himself, for instance, to be in some particular situation, or engaged in certain occupations according to each individuals habits and profession, and his discourse and conduct will be conformed to this delusion, with this striking peculiarity, however, that he is thwarted at every step, and is constantly meeting with obstacles that defy his utmost efforts to remove. Almost invariably, the patient manifests, more or less, feelings of suspicion and fear, laboring under continual apprehension of being made the victim of sinister designs and practices. He imagines that certain people have conspired to rob or murder him, and insists that he can hear them in an adjoining apartment, arranging their plans and preparing to rush into his room; or that he is in a strange place where he is forcibly detained and prevented from going to his own home. One of the most common hallucinations is, to be constantly seeing devils, snakes, vermin, and all manner of unclean things around him and about him, and peopling every nook and corner of his apartment with these loathsome objects. The extreme terror which these delusions often inspire, produces in the countenance, an unutterable expression of anguish; and, in the hope of escaping from his, fancied tormentors, the wretched patient endeavors to cut his throat, or jump from the window. Under the influence of these terrible apprehensions, he sometimes murders his wife or attendant, whom his disordered imagination identifies with his enemies, though he is generally tractable and not inclined to be mischievous. After perpetrating an act of this kind, he generally gives some illusive reason for his conduct, rejoices in his success, and expresses his regret at not having done it before. So complete and obvious is the mental derangement in this disease, so entirely are, the thoughts and actions governed by the most unfounded and absurd delusions, that if any form of insanity absolves from criminal responsibility, this certainly must have that effect. 3 Am. Jur. 5−20.

DELIVERANCE, Practice. A term used by the clerk in court to every prisoner who is arraigned and pleads not guilty to whom he wishes a good deliverance. In modern practice this is seldom used.

DELIVERY, conveyancing. The transferring of a deed from the grantor to the grantee, in such a manner as to deprive him of the right to recall it; Dev. Eq. R. 14 or the delivery may be made and accepted by an attorney. This is indispensably necessary to the validity of a deed; 9 Shepl. 569 2 Harring. 197; 16 Verm. 563; except it be the deed of a corporation, which, however, must be executed under their common seal. Watkin’s Prin. Con. 300. But although, as a general rule, the delivery of a deed is essential to its perfection, it is never averred in pleading. 1 Wms. Saund. Rep. 291, note Arch. Dig. of Civ. Pl. 138.

2. As to the form, the delivery may be by words without acts; as, if the deed be lying upon a table, and the grantor says to the grantee, "take that as my deed," it will be a sufficient delivery; or it may be by acts without words, and therefore a dumb man may deliver a deed. Co. Litt. 36 a, note; 6 Sim. Rep. 31; Gresl. Eq. Ev. 120; Wood. B. 2, c. 3; 6 Miss. R. 326; 5 Shepl. 391; 11 Verm. 621; 6 Watts & S. 329; 23 Wend. 43; 3 Hill, 513; 2 Barr, 191, 193 2 Ev. Poth. 165−6.

3. A delivery may be either absolute, Is when it is delivered to the grantor himself; or it may be conditional, that is, to a third person to keep until some condition shall have been performed by the grantee, and then it is called an escrow. (q. v.) See 2 Bl. Com. 306 4 Kent. Coin. 446 2 Bouv. Inst. n. 2018, et seq.; Cruise, Dig. tit. 32, c. 2, s. 87; 5 Serg. & Rawle, 523; 8 Watts, R. 1; and articles Assent; Deed.

4. The formula, "I deliver this as my act and deed," which means the actual delivery of the deed by the grantor into the hands or for the use of the grantee, is incongruous, not to say absurd, when applied to deeds which cannot in their nature be delivered to any person; as deeds of revocation, appointment, &c., under a power where uses to unborn children and the like, if in fact such instruments, though sealed, can be properly called deeds, i. e. writings sealed and delivered. Ritson’s Practical Points, 146.

DELIVERY, contracts. The transmitting the possession of a thing from one person into the power and possession of another.

2. Originally, delivery was a clear and unequivocal act of giving possession, accomplished by placing the subject to be transferred in the hands of the buyer or his avowed agent, or in their respective warehouses, vessels, carts,

and the like. This delivery was properly considered as the true badge of transferred property, as importing full evidence of consent to transfer; preventing the appearance of possession in the transferrer from continuing the credit of property unduly; and avoiding uncertainty and risk in the title of the acquirer.

3. The complicated transactions of modern trade, however, render impossible a strict adherence to this simple rule. It often happens that the purchaser of a commodity cannot take immediate possession and receive the delivery. The bulk of the goods; their peculiar situation, as when they are deposited in public custody for duties, or in the hands of a manufacturer for the purpose of having some operation of his art performed upon them, to fit them for the market the distance they are from the house; the frequency of bargains concluded by correspondence between distant countries, and many other obstructions, frequently render it impracticable to give or to receive actual delivery. In these and such like cases, something short of actual delivery has been considered sufficient to transfer the property.

4. In sales, gifts, and other contracts, where the party intends to transfer the property, the delivery must be made with the intent to enable the receiver to obtain dominion over it. 3 Serg. & Rawle, 20; 4 Rawle, 260; 5 Serg. & Rawle, 275 9 John. 337. The delivery may be actual, by putting the thing sold in the hands or possession of the purchaser; or it may be symbolical, as where a man buys goods which are in a room, the receipt of the keys will be sufficient. 1 Yeates, 529; 5 Johns. R. 335; 1 East, R. 192.; 3 Bos. & Pull. 233; 10 Mass. 308; 6 Watts & Serg. 94. As to what will amount to a delivery of goods and merchandise, vide 1 Holt, 18; 4 Mass. 661; 8 Mass. 287; 14 Johns. R. 167; 15 Johns. R. 849; 1 Taunt. R. 318 H. Black. R. 316, 504; 1 New R. 69; 6 East, R. 614.

5. There is sometimes considerable difficulty in ascertaining the particular period when the property in the goods sold passes from the vendor to the vendee; and what facts amount to an actual delivery of the goods. Certain rules have been established, and the difficulty is to apply the facts of the case.

6. − 1. Where goods are sold, if nothing remains to be done on the part of the seller as between him and the buyer, before the article is to be deliver−ed, the property has passed. East, R. 614; 4 Mass. 661; 8 Mass. 287 14 Johns. 167; 15 Johns. 349; 1 Holt's R. 18; 3 Eng. C. L. r. 9.

7. − 2. Where a chattel is made to order, the property therein is not vested in the quasi vendee, until finished and delivered, though he has paid for it. 1 Taunt. 318.

8. − 3. The criterion to determine whether there has been a delivery on a sale, is to consider whether the vendor still retains, in that character, a right over. the property. 2 H. Blackst, R. 316.

9. − 4. Where a part of the goods sold by an entire contract, has been taken possession of by the vendee, that shall be deemed a taking possession of the whole. 2 H. Bl. R. 504; 1 New Rep. 69. Such partial delivery is not a delivery of the whole, so as to vest in the vendee the entire property in the whole, where some act, other than the payment of the price, is necessary to be performed in order to vest the property. 6 East, R. 614.

10. − 5. Where goods are sent by order to a carrier the carrier receives them as the vendee's agent. Cowp. 294; 3 Bos. & Pull. 582; 2 N. R. 119.

11. − 6. A delivery may be made in a very slight manner; as where one buys goods which are in a room, the receipt of the key is sufficient. 1 Yeates, 529; 5 Johns. 335; 1 East, R. 192. See, also, 3. B. & P. 233 7 East, Rep. 558; 1 Camp. 235.

12. − 7. The vendor. of bulky articles is not bound to, deliver them, unless he stipulated to do so; be must give notice to the buyer that he is ready to deliver them. 5 Serg. & Rawle, 19; 12. Mass. 300; 4 Shepl. Rep. 49; and see 3 Johns. 399; 13 Johns. 294; 19 Johns. 218; 1 Dall. 171.

13. − 8. A sale of bricks in a brick−yard, accompanied with a lease of the yard until the bricks should be sold and removed, was held to be valid against the creditors of the vendor, without an actual removal. 10 Mass. 308.

14. − 9. Where goods were contracted to be sold upon condition that the vendee should give security for the price, and they are delivered without security being given, but with the declaration on the part of the vendor that the transaction should not be deemed a sale, until the security should be furnished; it was held that the goods remained the property of the vendor, notwithstanding the delivery. But it seems that in such cases the goods would be liable for the debts of, the vendee's creditors, originating after the delivery; and that the vendee may, for a bona fide consideration, sell the goods while in his possession. 4 Mass. 405.

15. − 10. Where goods are sold to be paid for on delivery, if, on delivery, the vendee refuses to pay for them, the property is not divested from the vendor. 13 Johns. 434; 1 Yeates, 529.

16. − 11. If the vendor rely on the promises of the vendee to perform the conditions of the sale, and deliver the goods accordingly, the right of property. is changed; but where, performance and delivery are understood to be

simultaneous, possession, obtained by artifice, will not vest a title in the vendee. 3 Serg. & Rawle, 20.

17. − 12. Where, on the sale of a chattel, the purchase money is paid, the property is vested in the vendee, and if he permit it to remain in the custody of the vendor, he cannot call upon the latter for any subsequent loss or deterioration not arising from negligence. 2 Johns. 13; 2 Caines, R. 38 3 Jolins. 394.

18. In order to make a good donatio mortis causa, it is requisite that there should be a delivery of the subject to or for the donee, where such delivery can be made. 3 Binn. R. 370; 1 Miles, Rep. 109, 110; 2 Ves. Jr. 120; 9 Ves. Jr. 1.

19. The delivery of the key of the place where bulky goods are deposited, is, however, a sufficient delivery of such goods. 2 Ves. Sen. 445. Vide 3 P. Wms. 357; 2 Bro. C. C. 612; 4 Barn. & A. 1; 3 Barn. & C. 45 Bouv. Inst. Index, h. t. See Sale; Stoppage in transitu; Tender; and Domat, Lois Civiles, Liv. 1, tit. 2, s. 2 Harr. Dig. Sale, II. 3.

DELIVERY, child−birth, med. jur. The act of a woman giving birth to her off−spring.

2. It is frequently of great importance to ascertain whether or not a delivery has taken place, and the time when it took place. Delivery may be considered with regard, 1. To pretended delivery. 2. To concealed delivery and, 3. To the usual signs of delivery.

3. − 1. In pretended delivery, the female declares herself to be a mother, without being so in reality; an act always prompted by folly or fraud.

4. Pretended delivery may present itself in three points of view, 1. When the female who feigns has never been pregnant. When thoroughly investigated, this may always be detected. There are signs which must be present, and cannot be feigned. An enlargement of the orifice of the uterus, and a tumefaction of the organs of generation, should always be present, and if absent, are conclusive against the' fact. Annales d'Hygiene, tome ii. p. 227. 2. When the pretended pregnancy and delivery have been preceded by one or more deliveries. In this case, attention should be given to the following circumstances: the mystery, if any, which has been affected with regard to the situation of the female; her age; that of her hushand and particularly whether aged or decrepid. 3. When the woman has been actually delivered, and substitutes a living for a dead child. But little evidence can be obtained on this subject from a physical examination.

5. − 2. Concealed delivery generally takes place when the woman either has destroyed her offspring, or it was born dead. In suspected cases, the following circumstances should be attended to: 1. The proofs of pregnancy which arise in consequence of the examination of the mother. When she has been pregnant, and has been delivered, the usual signs of delivery, mentioned below, will be present. A careful investigation as to the woman's appearance, before and since the delivery, will have some weight, though such evidence is not always to be relied upon, as such appearances are not unfrequently deceptive. 2. The proofs of recent delivery. 3. The connexion between the supposed state of parturition, and the state of the child that is found; for if the age of the child do not correspond to that time, it will be a strong circumstance in favor of the mother's innocence. A redness of the shin and an attachment of the umbilical cord to the navel, indicate a recent birth. Whether the child was living at its birth, belongs to the subject of infanticide. (q. v.)

6. − 3. The usual signs of delivery are very well collected in Beck's excellent treatise on Medical Jurisprudence, and are here extracted: If the female be examined within three or four days after the occurrence of delivery, the following circumstances will generally be observed: greater or less weakness, a slight paleness of the face, the eye a little sunken, and surrounded by a purplish or dark brown colored ring, and a whiteness of the skin, like a person convalescing from disease. The belly is soft, the skin of the abdomen is lax, lies in folds, and is traversed in various directions by shining reddish and whitish lines, which especially extend from the groins and pubis to the naval. These lines have sometimes been termed linecae albicantes, and are particularly observed near the umbilical region, where the abdomen has experienced the greatest distention. The breasts become tumid and hard, and on pressure emit a fluid, which at first is serous, and afterwards gradually becomes whiter; and the presence of this secretion is generally accompanied with a full pulse and soft skin, covered with a moisture of a peculiar and somewhat acid odor. The areolae round the nipples are dark colored. The external genital organs and vagina are dilated and tumefied throughout the whole of their extent, from the pressure of the foetus. The uterus may be felt through the abdominal parietes, voluminous, firm, and globular, and rising nearly as high as the umbilicus. Its orifice is soft and tumid, and dilated so as to admit two or more fingers. The fourchette; or anterior margin of the perinaeum, is sometimes torn, or it is lax, and appears to have suffered considerable distention. A discharge

(termed the lochial) commences from the uterus, which is distinguished from the menses by its pale color, its peculiar and well−known smell, and its duration. The lochia are at first of a red color, and gradually become lighter until they cease.

7. These signs may generally be relied upon as indicating the state of pregnancy, yet it requires much experience in order not to be deceived by appearances.

8. − 1. The lochial discharge might be mistaken for menstruation, or fluor albus, were it not for its peculiar smell; and this it has been found impossible, by any artifice, to destroy.

9. − 2. Relaxation of the soft parts arises as frequently from menstruation as from delivery; but in these cases the os uteri and vagina are not so much tumefied, nor is there that tenderness and swelling. The parts are found pale and flabby, when all signs of contusion disappear, after delivery; and this circumstance does not follow menstruation.

10. − 3. The presence of milk, though a usual sign of delivery, is not always to be relied upon, for this secretion may take place independent of pregnancy.

11.−4. The wrinkles and relaxations of the abdomen which follow delivery, may be the consequence of dropsy, or of lankness following great obesity. This state of the parts is also seldom striking after the birth of the first child, as they shortly resume their natural state. Vide, generally, 1 Beck's Med. Jur. c. 7, p. 206; 1 Chit. Med. Jur. 411; Ryan's Med. Jur. ch. 10, p. 133; 1 Briand, Med. Leg. lere partie, c. 5.

DELUSION, med. jurisp. A diseased state of the mind, in which persons believe things to exist, which exist only, or in the degree they are conceived of only in their own imaginations, with a persuasion so fixed and firm, that neither evidence nor argument can convince them to the contrary.

2. The individual is, of course, insane. For example, should a parent unjustly persist without the least ground in attributing to his daughter a course of vice, and use her with uniform unkindness, there not being the slightest pretence or color of reason for the supposition, a just inference of insanity, or delusion, would arise in the minds of a jury: because a supposition long entertained and persisted in, after argument to the contrary, and against the natural affections of a parent, suggests that he must labor under some morbid mental delusion. 3 Addams' R. 90, 91; Id. 180; Hagg. R. 27 and see Dr. Connolly's Inquiry into Insanity, 384; Ray, Med. Jur. Prel. Views., _20, p. 41, and _22, p. 47; 3 Addams, R. 79; 1 Litt. R. 371 Annales d'Hygiene Publique, tom. 3, p. 370; 8 Watts, 70; 13 Ves. 89; 1 Pow. Dev. by Jarman, 130, note Shelf. on Lun. 296; 2 Bouv. Inst. n. 2104−10.

DEMAND, contracts. A claim; a legal obligation.

2. Lord Coke says, that demand is a word of art, and of an extent, in its signification, greater than any other word except claim. Litt. sect. 508; Co. Litt. 291; 2 Hill, R. 220; 9 S. & R. 124; 6 Watts and S. 226. Hence a release of all demands is, in general, a release of all covenants, real and personal, conditions, whether broken or not, annuities, recognizances, obligations, contracts, and the like. 3 Tho. Co. Litt. 427; 3 Penna, 120; 2 Hill, R. 228.

3. But a release of all demands does not discharge rent before it is due, if it be a rent incident to the reversion; for the rent was not only not due, but the consideration − the future enjoyment of the lands − for which the rent was to be given, was not executed. 1 Sid. 141; 1 Lev. 99 3 Lev. 274; Bac. Ab. Release, I.

DEMAND, practice. A requisition or a request by one individual to another to do a particular thing.

2. Demands are either express or implied. In many cases, an express demand must be made before the commencement of an action, some of which will be considered below; in other cases an implied demand is all that the law requires, and the bringing of an action is a sufficient demand in those cases. 1 Saund. 33, note 2.

3. A demand is frequently necessary to secure to a man all his rights, both in actions arising on contracts and those which are founded on some tort. It is requisite also, when it is intended to bring the party into contempt for not performing an order which has been made a rule of court.

4. − 1. Whether a demand is requisite before the plaintiff can commence an action arising on contract, depends upon express or implied stipulations of the parties. In case of the sale of property, for example, to be paid for on delivery, a demand of it must be made before the commencement of an action for non−delivery, and proved on the trial, unless it can be shown that the seller has incapacitated himself by a resale and delivery of the property to another person, or otherwise. 1 East, R. 204 5 T. R. 409; 10 East, R. 359; 5 B. & Ald. 712 2 Bibb, 280 Hardin, 79; 1 Verm. 25; 5 Cowen, 516. 16 Mass. 453; 6 Mass. 61 4 Mass. 474; 3 Bibb, 85; 3 Wend. 556; 5 Munf. R. 1; 2 Greenl. 308; 9 John. 361; 6 Hill, N. Y. Rep. 297.

5. On the same principles, a request on a general promise to marry is requisite, unless it be dispensed with by the party's marrying another person, which puts it out of his power to fulfil his contract, or that he refuses to marry at

any time. 2 Dow. & Ry. 55; 1 Chit. Pr. 57, note (n), and 438, note (e)

6. A demand of rent must always be made before a re−entry for the non−payment of rent. Vide Re−entry.

7. When a note is given and no time of payment is mentioned, it is payable immediately. 8 John. R. 374; 5 Cowen, R. 516 1 Conn. R. 404; 1 Bibb, R. 164;
1 Blackf. R. 233.

8. There are cases where, a demand is not originally necessary, but becomes so by the act of the obligor. On a promissory note no express demand of payment is requisite before bringing an action, but if the debtor tenders the amount due to the creditor on the note, it becomes necessary before bringing. an action, to make a demand of the debtor for payment; and this should be of the very sum tendered. 1 Campb. 181 Id. 474; 1 Stark. R. 323; 2 E. C. L. R. 409.

9. When a debt or obligation is payable, and no day of payment is fixed, it is payable, on demand. In omnibus obligationibus in quibus dies non ponitur, presenti die debitur. Jac. Introd. 62; 7 T. R. 427 Barn. & Cr. 157. The demand must, however, be made in a reasonable time, for after the lapse of twenty years, a presumption will arise that the note has been paid; but, like some other presumptions, it may be rebutted, by showing the fact that the note remains unpaid. 5 Esp. R. 52 1 D. & R. 16 Byles on Bills, 169.

10. When demand of the payment of a debt, secured by note or other instrument, is made, the party making it should be ready to deliver up such note or instrument, on payment. If it has been lost or destroyed, an indemnity should be offered. 2 Taunt. 61; 3 Taunt. 397; 5 Taunt. 30; 6 Mass. R. 524; 7 Mass. R. 483; 13 Mass. R. 557; 11 Wheat. R. 171; 4 Verm. R. 313; 7 Gill & Johns. 78 3 Whart. R. 116; 12 Pick. R. 132 17 Mass. 449.

11.−2. It is requisite in some cases arising ex delicto, to make a demand of restoration of the right before the commencement of an action.

12. The following are examples 1. When the wife, apprentice, or servant of one person, has been harbored by another, the proper course is to make a demand of restoration before an action brought, in order to constitute the party a wilful wrongdoer, unless the plaintiff can prove an original illegal enticing away. 2 Lev. 63: Willes, 582; 1 Peake's C. N. P. 55; 5 East, 39; 6 T. R. 652; 4 Moore's R. 12 16 E. C. L. R. 3 5 7.

13. − 2. In cases where the taking of goods is lawful, but their subsequent detention becomes illegal, it is absolutely necessary, in order to secure sufficient evidence of a conversion on the trial, to give a formal notice of the owner's right to the property and possession, and to make a formal demand in writing of the delivery of such possession to the owner. The refusal to comply with such a demand, unless justified by some right which the possessor may have in the thing detained, will in general afford sufficient evidence of a conversion. 2 Saund. 47, note (e); 1 Chit. Pr. 566.

14. − 3. When a nuisance has been erected or continued by a man on his own land) it is advisable, particularly in the case of a private nuisance, to give the party notice and request him to remove it, either before an entry is made for the purpose of abating it, or an action is commenced against the wrong doer and a demand is always indispensable in cases of a continuance of a nuisance originally created by another person. 2 B. & C. 302; S. C. 9 E. C. L. R. 96 Cro. Jac. 555; 5 Co. 100, 101; 2 Phil. Ev. 8, 18, n. 119; 1 East, 111; 7 Vin. Ab. 506; 1 Ayl. Pand. 497; Bac. Ab. Rent, 1. Vide articles Abatement of Nuisance, and if Nuisance. For the allegation of a demand or request in a declaration, see article Licet scoepius requisitus; and Com. Dig. Pleader, C 70 2 Chit. Pl. 84; 1 Saund. 33, note 2; 1 Chit. Pl. 322.

15. − 4. When an order to pay money, or to do any other thing, has been made a rule of court, a demand for the payment of the money, or performance of the thing, must be made before an attachment will be issued for a contempt. 2 Dowl. P. C. 338, 448: 1 C. M. & R. 88, 459; 4 Tyr. 369; 2 Scott, 193; 4 Dowl. P. C. 114; 1 Hodges 197; 1 Har. & Woll. 216; 1 Hodges, 157; Id. 337; 4 Dowl. P. C. 86.

DEMAND IN RECONVENTION. In Louisiana, this term is used to signify the demand which the defendant institutes in consequence of that which the plaintiff has brought against him. Code of Pr. art. 374. Vide Cross action.

DEFANDANT, practice. The plaintiff or party who brings a real action, is called the demandant. Co. Litt. 127; 1 Com. Dig. 85.

DEMENCY, dementia, med. jur. A defect, hebetude, or imbecility of the under standing, general or partial, but confined to individual faculties of the mind, particularly those concerned in associating and comparing ideas, whence proceeds great, confusion and incapacity in arranging the thoughts. 1 Chit. Med. Jur. 351; Cyclop. Practical Med. tit. Insanity; Ray, Med. Jur. ch. 9; 1 −Beck's Med. Jur. 547.

2. Demency is attended with a general enfeeblement of the moral and intellectual faculties, consequence of age or disease, which were originally well developed and sound. It is characterised by forgetfulness of the past; indifference to the present and future, and a childish disposition. It differs from idiocy and imbecility. In these latter, the powers of the mind were never possessed, while in demency, they have been lost.

3. Demency may also be distinguished from mania, with which it is sometimes confounded. In the former, the mind has lost its strength, and thereby the reasoning faculty is impaired; while in the latter, the madness arises from an exaltation of vital power, or from a morbid excess of activity.

4. Demency is divided into acute and chronic. The former is a consequence of temporary errors of regimen, fevers, hemorrhages, &c., and is susceptible of cure the latter, or chronic demency, may succeed mania, apoplexy, epilepsy, masturbation, and drunkenness, but is generally that incurable decay of the mind which occurs in old age.

5. When demency has been fully established in its last stages, the acts of the individual of a civil nature will be void, because the party had no consenting mind. Vide Contracts; Wills; 2 Phillim. R. 449. Having no legal will or intention, he cannot of course commit a crime. Vide Insanity; Mania.

DEMESNE, Eng. law. The name given to that portion of the Iands of a manor which the lord retained in his own hands for the use of himself and family. These lands were called terra dominicales or demesne lands, because they were occupied by the lord, or dominus manerii, and his servants, &c. 2 Bl. Com. 90. Vide Ancient Demesne; Demesne as of fee; and Soil assault demesne.

DEMESNE AS OF FEE. A man is said to be seised in his demesne as of fee of a corporeal inheritance, because he has a property dominicum or demesne in the thing itself. 2 Bl. Com. 106. But when he has no dominion in the thing itself, as in the case of an incorporeal hereditament, he is said to be seised as of fee, and not in his demesne as of fee. Liit. s. 10; 17 S. & R. 196; Jones on Land Titles, i66.

2. Formerly it was the practice in an action on the case, e. g. for a nuisance to real estate, to aver in the declaration the seisin of the plaintiff in demesne as of fee; and this is still necessary, in order to estop the record with the land; so that it may run with or attend the title. Arch. Civ. Pl. 104; Co. Ent. 9, pl. 8 Lill. Ent. 62; 1 Saund. Rep. 346; Willes, Rep. 508. But such an action may be maintained on the possession as well as on the seisin, although the effect of the record in this case upon the title would not be the same. Steph. on Pl. 322 Arch. Dig. 104; 1 Lutw. 12; 2 Mod. 71; 4 T. R. 718; 2 Saund. 1 Arch. Dig. 105; Cro. Car. 500. 575

DEMIDIETAS. This word is used in ancient records for a moiety, or one half. DEMIES. In some universities and colleges this term is synonymous with scholars. Boyle on Charities, 129.

DEMISE, contracts. In its most extended signification, it is a conveyance either in fee, for life, or for years. In its more technical meaning, it is a lease or conveyance for a term of years. Vide Cow. L. & T. Index, h. t.; Ad. Eject. Index, h. t.; 2 Hill. Ab. 130; Com. Dig. h. t., and the heads there referred to. According to Chief Justice Gibson, the term demise strictly denotes a posthumous grant, and no more. 5 1 Whart. R. 278. See 4 Bing. N. C. 678; S. C. 33 Eng. C. L. R. 492; 2 Bouv. Inst. n. 1774, et seq.

DEMISE, persons. A term nearly synonymous with death. It is usually applied in England to the death of the king or queen.

DEMOCRACY, government. That form of government in which the sovereign power is exercised by the people in a body, as was the practice in some of the states of Ancient Greece; the term representative democracy has been given to a republican government like that of the United States.

DEMONSTRATION. Whatever is said or written to designate a thing or person. For example, a gift of so much money, with a fund particularly referred to for its payment, so that if the fund be not the testator's property at his death, the legacy will fail; this is called a demonstrative legacy. 4 Ves. 751; Lownd. Leg. 85; Swinb. 485.

2. A legacy given to James, who married my cousin, is demonstrative; these expressions present the idea of a demonstration; there are many James, but only one who married my cousin. Vide Ayl. Pand. 130; Dig. 12, 1, 6; Id. 35, 1, 34 Inst. 2, 20, 30.

3. By demonstration is also understood that proof which excludes all possibility of error; for example, mathematical deductions.

DEMURRAGE, mar. law. The freighter of a ship is bound not to detain it, beyond the stipulated or usual time, to load, or to deliver the cargo, or to sail. The extra days beyond the lay days (being the days allowed to load and unload the cargo), are called the days of demurrage; and that term is likewise applied to the payment for such delay, and it may become due, either by the ship's detention, for the purpose of loading or unloading the cargo,

either before, or during, or after the voyage, or in waiting for convoy. 3 Kent, Com. 159; 2 Marsh, 721; Abbott on Ship. 192 5 Com. Dig. 94, n., 505; 4 Taunt. 54, 55; 3 Chit. Com. Law, 426; Harr. Dig. Ship and Shipping, VII.

DEMURRER. (From the Latin demorari, or old French demorrer, to wait or stay.) In pleading, imports, according to its etymology, that the objecting party will not proceed with the pleading, because no sufficient statement has been made on the other side; but will wait the judgment of the court whether he is bound to answer. 5 Mod. 232; Co. Litt. 71, b; Steph. Pl. 61.

2. A demurrer may be for insufficiency either in substance or in form that is, it may be either on the ground that the case shown by the opposite party is essentially insufficient, or on the ground that it is stated in an inartificial manner; for the law requires in every pleading, two thing's; the one, that it be in matter sufficient; the other, that it be deduced and expressed according to the forms of law; and if either the one or the other of these be wanting, it is cause of demurrer. Hob. 164. A demurrer, as in its nature, so also in its form, is of two kinds; it is either general or special.

3. With respect to the effect of a demurrer, it is, first, a rule, that a demurrer admits all such matters of fact as are sufficiently pleaded. Bac. Abr. Pleas, N 3; Com. Dig. Pleader, Q 5. Again, it is it rule that, on a demurrer, the court will consider the whole record, and give judgment for the party who, on the whole, appears to be entitled to it. Com. Dig. Pleader, M. 1, M 2; Bad. Abr. Pleas. N 3; 5 Rep. 29 a: Hob. 56; 2 Wils. 150; 4 East, 502 1 Saund. 285 n. 5. For example, on a demurrer to the replication, if the court think the replication bad, but perceive a substantial fault in the plea, they will give judgment, not for the defendant, but for the plaintiff; 2 Wils. R. 1&0; provided the declaration be good; but if the declaration also be bad in substance, then upon the same principle, judgment would be given for the defendant. 5 Rep. 29 a. For when judgment is to be given, whether the issue be in law or fact, and whether the cause have proceeded to issue or not, the court is always to examine the whole record, and adjudge for the plaintiff or defendant, according to the legal right, as it may on the whole appear.

4. It is, however, subject to, the following exceptions; first, if the plaintiff demur to a plea in abatement, and the court decide against the plea, they will give judgment of respondeat ouster, without regard to any defect in the declaration. Lutw. 1592, 1667; 1 Salk. 212; Carth. 172 Secondly, the court will not look back into the record, to adjudge in favor of an apparent right in the plaintiff, unless the plaintiff have himself put his action upon that ground. 5 Barn. & Ald 507. Lastly, the court, in examining the whole record, to adjudge according to the apparent right, will consider the right in matter of substance, and not in respect of mere form, such as should have been the subject of a special demurrer. 2 Vent. 198−222.

5. There can be no demurrer to a demurrer: for a demurrer upon a demurrer, or pleading over when an issue in fact is offered, is a discontinuance. Salk. 219; Bac. Abr. Pleas, N 2.

6. Demurrers are general and special, and demurrers to evidence, and to interrogatories.

7. − 1. A general demurrer is one which excepts to the sufficiency of a previous pleading in general terms, without showing specifically the nature of the objection; and such demurrer is sufficient, when the objection is on matter of substance. Steph. Pl. 159; 1 Chit. Pl. 639; Lawes, Civ. Pl. 167; Bac. Abr. Pleas, N 5; Co. Lit. 72 a.

8. − 2. A special demurrer is one which excepts to the sufficiency of the pleadings on the,opposite side, and shows specifically the nature of the objection and the particuIar ground of exception. Co. Litt. 72, a.; Bac. Abr. Pleas, N 5.

9. A special demurrer is necessary, where it turns on matter of form only; that is, where, notwithstanding such objections, enough appears to entitle the opposite party to judgment, as far as relates to the merits of the cause. For, by two statutes, 27 Eliz. ch. 5, and 4 Ann. ch. 16, passed with a view to the discouragement of merely formal objections, it is provided in nearly the same terms, that the judges "shall give judgment according to the very right of the cause and matter in law as it shall appear unto them, without regarding any imperfection, omission, defect or want of form, except those only 'Which the party demurring shall, specifically. and particularly set down and express, together with his demurrer, as the causes of the same." Since these statutes, therefore, no mere matter of form can be objected to on a general demurrer; but the demurrer must be in the special form, and the objection specifically stated. But, on the other hand, it is to be observed, that, under a special demurrer, the party may, on the argument, not only take advantage of the particular faults which his demurrer specifies, but also of all objections in substance, or regarding the very right of the cause, (as the statute expresses it.) as under those statutes, need not be particularly set down. It follows, therefore, that unless the objection be clearly of the substantial kind, it is the safer course, in all cases, to demur specially. Yet, where a general demurrer is plainly efficient, it is more usually adopted in prctice; because the effect of the special form being to apprise the opposite

party more distinctly of the nature of the objection, it is attended with the inconvenience, of enabling him to prepare to maintain his pleading by argument, or of leading him to apply the earlier to amend. With respect to the degree of particularity, with which, under these statutes, the special demurrer must assign the ground of objection, it may be observed, that it is not sufficient to object, in general terms, that the pleading is "uncertain, defective, and informal," or the like, but if is necessarily to show in what, it respect, uncertain, defective, and informal. 1 Saund. 161, n. 1, 337 b, n. 3; Steph. Pl. 159, 161; 1 Chit. Pl. 642.

10.− 3. A demurrer to evidence is analogous to a demurrer in pleading; the party from whom it comes declaring that he will not proceed, because the evidence offered on the other side, is not sufficient to maintain the issue. Upon joinder in demurrer, by the opposite party, the jury are, in general, discharged from giving any verdict; 1 Arch. Pr. 186; and the demurrer being entered on record, is afterwards argued and decided by the court in banc; and the judgment there given upon it, may ultimately be brought before a court of error. See 2 H. Bl. 187 4 Chit. Pr. 15 Gould on Pl. c. 9, part 2, _47 United States Dig. Pleading, Viii.

11. − 4. Demurrer to interrogatories. By this phrase is understood the reasons which a witness tenders for not answering a particular question in interrogatories. 2 Swanst. R. 194. Strictly speaking, this is not a demurrer, which admits the facts stated, for the purpose of taking the. opinion of the court but by an abuse of the term, the witness objection to answer is called a demurrer, in the popular sense. Gresl. Eq. Ev. 61.

12. The court are judicially to determine their validity. The witness must state his objection very carefully, for these demurrers are held to strict rules, and are readily overruled if they cover too much. 2 Atk. 524; 1 Y. & J. 32. See, in general, as to demurrers,, Bac. Abr. Pleas, N; Com. Dig. Pleader, Q; Saund. Rep. Index, tit. Demurrers; Lawes Civ. Pl. ch. 8; 1 Chit. Pl. 639−649 Bouv. Inst. Index, h. t.

DEMURRER BOOK) Eng. law. When an issue in law is formed, a transcript is made upon paper of all the pleadings that have been filed or delivered between the parties, which transcript is called the demurrer book. Steph. Pl. 95. See Paper book.

DEMY SANKE or SANGUE. This is a barbarous corruption of, demi sang, half−
blood. (q. v.)

DENARII. An ancient general term for any sort of pecunia numerata, or ready money. The French use the word denier in the same sense: payer de ses propres
deniers.

DENARIUS DEI. A term used in some countries to signify a certain sum of money which is given by one of the contracting parties to the other, as a sign of the completion of the contract.

2. It does not however bind the parties he who received it may return it in a limited time, or the other may abandon it, and avoid the engagement.

3. It differs from arrhae in this, that the latter is a part of the consideration, while the denarius dei is no part of it. 1 Duverg. n. 132 3 Duverg. n. 49; Repert. de Jur. verbo Denier a Dieu.

DENIAL, pleading. To traverse the statement of the opposite party a defence. See Defence; Traverse.

DENIER A DIEU, French law. It is a sum of money which the hirer of a thing gives to the other party as evidence, or for the consideration of the * contract, which either party may annul, within twenty−four hours, the one who, giving the denier a dieu, by demanding, and the other by returning it. It differs from arrhae. Vide Arrhae; Denarius Dei.

DENIZATION, Eng. law.. The act by which a foreigner becomes a subject of England; but he has not the rights either of a natural born subject, nor of one who has become naturalized. Bac. Ab. Aliens, B.

DENIZEN, English law. An alien born, who has obtained, ex donatione legis, letters patent to make him au English subject.

2. He is intermediate between a natural born subject and an alien. He may. take lands by purchase or devise, which an alien cannot, but he is incapable of taking by inheritance. 1 Bl. Com. 374. In the United States there is no such civil condition.

DENUNCIATION, crim. law. This term is used by the civilians to signify the act by which au individual informs a public officer, whose duty it is to prosecute offenders, that a crime has been committed. It differs from a complaint. (q. v.) Vide 1 Bro. C. L. 447; 2 Id. 389; Ayl. Parer. 210, Poth. Proc. Cr. sect. 2, _2.

DEODAND, English law. This word is derived from Deo dandum, to be given to God; and is used to designate the instrument, whether it be an animal or inanimate thing, which has caused the death of a man. 3 Inst. 57; Hawk. bk. 1, c. 8.

2. The deodand is forfeited to the king, and was formerly applied to pious uses. But the presentment of a deodand by a grand jury, under their general charge from the judge of assize, is void. 1 Burr. Rep. 17.

DEPARTMENT. A portion of a country. In France, the country is divided into departments, which are somewhat similar to the counties in this country. The United States have been divided into military departments, including certain portions of the country. 1 Pet. 293.

2. By department is also meant the division of authority, as, the department of state, of the navy, &c.

DEPARTMENT OF THE NAVY, government. The Act of April 80, 1798, 1 Story's Laws, 498, establishes an executive department, under the denomination of the department of the navy, the chief officer of which shall be called the secretary of the navy. (q. v.)

2. A principal clerk, and such other clerks as he shall think necessary, shall be appointed by the secretary of the navy, who shall be employed in such manner as he shall deem most expedient. In case of vacancy in the office of the secretary, by removal or otherwise, it shall be the duty of the principal clerk to take charge and custody of all books, records, and documents of said office. Id. s. 2

DEPARTMENT OF STATE, government. The laws of the United States provide that there shall be an executive department, denominated the department of state; and a principal officer therein, called the secretary of state. (q. v.) Acts of July 27, 1789; September 15, 1789, s. 1. There shall be in such department an inferior officer, to be appointed by the Secretary, and employed therein, as he shall deem proper, to be called the chief clerk of the department of state. (q. v.) Act of July 27, 1789, s. 2.

2. He may employ, besides, one chief clerk, whose compensation shall not exceed two thousand dollars. per annum; two clerks, whose compensation shall not exceed one thousand six hundred dollars; four clerks, whose compensation shall not exceed one thousand four hundred dollars each; one clerk, whose compensation shall not exceed one thousand dollars; two clerks, whose compensation shall not exceed eight hundred dollars each; one, messenger and assistant, at a compensation not exceeding one thousand and fifty dollars per annum; one superintendent of the patent office, whose compensation shall not exceed one thousand five hundred dollars; and, in the patent office, one clerk, whose compensation shall not exceed one thousand dollars; one machinist, at a compensation not exceeding seven hundred dollars; and one messenger, at a compensation not exceeding four hundred dollars per annum. Act of May 26, 1824; Act of April 20, 1818, s. 2.

3. By the Act of March 2, 1827, 3 Story's Laws, 2061, he is authorized to employ, in the state department, one additional clerk, whose compensation shall not exceed sixteen hundred dollars; two additional clerks, whose compensation shall not exceed one thousand dollars each; and one additional clerk for the patent office, whose compensation shall not exceed eight hundred dollars.

DFPARTMENT OP THE TREASURY OF THE UNITED STATES, government. The department of the treasury is constituted of the following officers, namely: the secretary of the treasury, (q. v.) the head of the department, two comptrollers, five auditors, a treasurer, a register, and a commissioner of the land office.

2. Each of these officers is required to perform certain appropriate duties, in which they are assisted by numerous clerks. They are prohibited from carrying on the business of trade or commerce, from being the owners or part owners of any sea vessel, from buying any public lands, from disposing or purchasing any securities of any state, or of the United States, from receiving or applying to their own use any emolument or gain in transacting business in this department, other than what shall be allowed by law, under the penalty of three thousand dollars, and of being removed from office, and of being thereafter incapable of holding any office under the United States. Gord. Dig. 228 to 248

DEPARTMENT OF WAR, government. The act of August 7, 1789, 1 Story's Laws, 31, creates an executive department, to be denominated the department of war; and there shall be a principal officer therein, to be called the secretary for the department of war. (q. v.) .

2. There shall be in the said department, an inferior officer, to be appointed by the secretary, to be employed therein, and to be called the chief clerk in the department of war, and who, whenever the said principal officer shall be removed by the president, or in any other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books, and papers, appertaining to the said department. Id.

DEPARTURE, pleading. Said to be when a party quits or departs from the case, or defence, which he has first made, and has recourse to another; it is when his replication or rejoinder contains matter not pursuant to the declaration, or plea, and which does not support and fortify it. Co. Litt. 304, a; 2 Saund. 84, a, n. (1); 2 Wils. 98; 1 Chit. Pl. 619. The following example will illustrate what is a departure: if to assumpsit, the defendant plead

infancy, and to a replication of necessaries, rejoin, duress, payment, release, &c., the rejoinder is a departure , and a good cause of demurrer, because the defendant quits or departs from the case or defence which he first made, though either of these matters, newly pleaded, would have been a good bar, if first pleaded as such.

2. A departure in pleading is never allowed, for the record would, by such means, be spun out into endless prolixity; for he who has departed from and relinquished his first plea, might resort to a second, third, fourth, or even fortieth defence; pleading would, by such means, become infinite. He who had a bad cause, would never be brought to issue, and he who had a good one, would never obtain the end of his suit. Summary on Pleading, 92; 2 Saund. 84, a. n. (l); 16 East, R. 39; 1 M. & S. 395 Coin. Dig. Pleader, F 7, 11; Bac. Abr. Pleas, L; Vin. Abr. Departure; 1 Archb. Civ. Pl. 247, 253; 1 Chit. Pl. 618.

3. A departure is cured by a verdict in favor of him who makes it, if the matter pleaded by way of departure is a sufficient answer, in substance, to what is before pleaded by the opposite party; that is, if it would have been sufficient, if pleaded in the first instance. 2 Saund. 84 1 Lill. Ab. 444.

DEPARTURE, maritime law. A deviation from the course of the voyage insured. 2. A departure is justifiable or not justifiable it is justifiable ill consequence of the stress of weather, to make necessary repairs, to succor a ship in distress, to avoid capture, of inability to navigate the ship, mutiny of the crew, or other compulsion. 1 Bouv. Inst. n. 1189.

DEPENDENCY. A territory distinct from the country in which the supreme sovereign, power resides, but belonging rightfully to it, and subject to the laws and regulations which the sovereign may think proper to prescribe. It differs from a colony, because it is not settled by the citizens of the sovereign or mother state; and from possession, because it is held by other title than that of mere conquest: for example, Malta was considered a dependency of Great Britain in the year 1813. 3 Wash. C. C. R. 286. Vide act of congress, March 1, 1809, commonly called the non−importation law.

DEPENDENT CONTRACT. One which it is not the duty of the contractor to perform, until some obligation contained in the same agreement has been performed by the other party. Ham. on Part. 17, 29, 30, 109.

DEPONENT, witness. One who gives information, on oath or affirmation, respecting some facts known to him, before a magistrate he who makes a deposition.

DEPOPULATION. In its most proper signification, is the destruction of the people of a country or place. This word is, however, taken rather in a passive than an active one; we say depopulation, to designate a diminution of inhabitants, arising either from violent causes, or the want of multiplication. Vide 12 Co. 30.

DEPORTATION, civil law. Among the Romans a perpetual banishment, depriving the banished of his rights as a citizen; it differed from relegation (q. v.) and exile. (q. v.). 1 Bro. Civ. Law, 125 note; Inst. 1, 12, 1 and 2; −Dig. 48, 22, 14, 1.

TO DEPOSE, practice. To make a deposition; to give testimony as a witness. TO DEPOSE, rights. The act of depriving an individual of a public employment or office, against his will. Wolff, _1063. The term is usually applied to the deprivation of all authority of a sovereign.

DEPOSIT, contracts. Usually defined to be a naked bailment of goods to be kept for the bailor, without reward, and to be returned when he shall require it. Jones' Bailm. 36, 117; 1 Bell's Com. 257. See also Dane's Abr. ch. 17, aft. 1, _3; Story on Bailm. c. 2, _41. Pothier defines it to be a contract, by which one of the contracting parties gives a thing to another to keep, who is to do so gratuitously, and obliges himself to return it when he shall be requested. Traite du Depot. See Code Civ. tit. 11, c. 1, art. 1915; Louisiana Code, tit. 13, c. 1, art. 2897.

2. Deposits, in the civil law, are divisible into two kinds; necessary and voluntary. A necessary deposit is such as arises from pressing necessity; as, for instance, in case of a fire, a shipwreck, or other overwhelming calamity; and thence it is called miserabile depositum. Louis. Code 2935. A voluntary deposit is such as arises without any such calamity, from the mere consent or agreement of the parties. Dig. lib. 16, tit. 3, _2.

3. This distinction was material in the civil law, in respect to the remedy, for in voluntary deposits @ the action was only in simplum; in the other in duplum, or two−fold, whenever the depositary was guilty of any default. The common law has made no such distinction, and, therefore, in a necessary deposit, the remedy is limited to damages co−extensive with the wrong. Jones, Bailm. 48.

4. Deposits are again divided by the civil law into simple deposits, and sequestrations; the former is when there is but one party depositor (of whatever number composed), having a common interest; the latter is where there are two or more depositors, having each a different and adverse interest. See Sequestration.

5. These distinctions give rise to very different considerations in point of responsibility and rights. Hitherto they

do not seem to have been incorporated in the common law; though if cases should arise, the principles applicable to them would scarcely fail of receiving general approbation, at least, so far as they affect the rights and responsibilities of the parties. Cases of judicial sequestration and deposits, especially in courts of chancery and admiralty, may hereafter require the subject to be fully investigated. At present, there have been few cases in which it has been necessary to consider upon whom the loss should fall when the property has perished in the custody of the law. Story on Bailm. _41−46.

6. There is another class of deposits noticed by Pothier, and called by him irregular deposits. This arises when a party having a sum of money which he doe's not think safe in his own hands; confides it to another, who is to return him, not the same money , but a like sum when he shall demand it. Poth. Traite du Depot, ch. 3, _3. The usual deposit made by a person dealing with a bank is of this nature. The depositor, in such case, becomes merely a creditor of the depositary for the money or other thing which he binds himself to return.

7. This species of deposit is also called an improper deposit, to distinguish it from one that is regular and proper, and which latter is sometimes called a special deposit. 1 Bell's Com. 257−8. See 4 Blackf. R. 395.

8. There is a kind of deposit which may, for distinction's sake, be called a quasi deposit, which is governed, by the same general rule as common deposits. It is when a party comes lawfully to the possession of another person's property by finding. Under such circumstances, the finder seems bound to the same reasonable care of it as any voluntary depositary ex contractu. Doct. & Stu. Dial. 2, ch. 38; Story on Bailm. _85; and see Bac. Abr. Bailm. D. See further, on the subject of deposits, Louis. Code, tit. 13; Bac. Abr. Bailment; Digest, depositi vel contra; Code, lib. 4, tit. 34; Inst. lib. 3, tit. 15, _3; Nov. 73 and 78; Domat, liv. 1, tit. 7, et tom. 2, liv. 3, tit. 1, s. 5, n. 26; 1 Bouv. Inst. n. 1053, et seq.

DEPOSITARY, contracts. He with whom a deposit is confided or made.

2. It is, the essence of the contract of deposits that it should be gratuitous on the part 'of the depositary. 9 M. R. 470. Being a bailee without reward, the depositary is bound to slight diligence only, and he is not therefore answerable except for gross neglect. 1 Dane's Abr. c. 17, art. 2. But in every case good faith requires that he should take reasonable care; and what is reasonable care, must materially depend upon the nature and quality of the thing, the circumstances under which it is deposited, and sometimes upon the character and confidence, and particular dealing of the parties. See 14 Serg. & Rawle, 275. The degree of care and diligence is not altered by the fact, that the depositary is the joint owner of the goods with the depositor; for in such a case, if the possessor is guilty of gross negligence, he will still be responsible, in the same manner as a common depositary, having no interest in the thing. Jones' Bailm. 82, 83. As to the care which. a depositary is bound to use, see 2 Ld. Raym. 900, 914; 1 Ld. Raym. 655; 2 Kent's Com. 438; 17 Mass. R. 479, 499; 4 Burr.. 2298; 14 Serg. & Rawle, 275; Jonees' Bailm. 8; Story on Bailm. _63, 64.

3. The depositary is bound to return the deposit in individuo, and in the same state in which he received it; if it is lost, or injured, or spoiled, by his fraud or gross negligence, he is responsible to the extent of the loss or injury. Jones' Bailm. 36, 46, 120; 17 Mass. R. 479; 2 Hawk. N. Car. R. 145; 1 Dane's Abr. c. 17, art. 1 and 2. He is also bound to restore, not only the thing deposited, but any increase or profits which may have accrued from it; if an animal deposited bear young, the latter are to be delivered to the owner. Story on Bailm. _99.

4. In general it may be laid down that a depositary has no, right to use the thing deposited. Bac. Abr. Bailm. D; Jones' Bailm. 81, 82; 1 Dane's Abr. c. 17, art. 11, _2. But this proposition must be received with many qualifications. There are certain cases, in which the use of the thing may be necessary for the due preservation of the deposit. There are others, again, where it would be mischievous; and others again, where it would be, if not beneficial, at least indifferent. Jones' Bailm. 81, 82; Owen's R. 123, 124; 2 Salk. 522; 2 Kent's Com. 450. The best general rule on the subject, is to consider whether there may or may not be an implied consent, on the part of the owner, to the use. If the use would be for the benefit of the deposit, the assent of the owner may well be presumed; if to his injury, or perilous, it ought not to be presumed; if the use would be indifferent, and other circumstances, do not incline either way, the use may be deemed not allowable. Jones' Bailm. 80, 81; Story on Bailm. _90; 1 Bouv. Inst. n. 1008, et seq.

DEPOSITION, evidence. The testimony of a witness reduced to writing, in due form of law, taken by virtue of a commission or other authority of a competent tribunal.

2. Before it is taken, the witness ought to be sworn or affirmed to declare the truth, the whole truth, and nothing but the truth. It should properly be written by the commissioner appointed to take it, or by the witness himself; 3 Penna. R. 41; or by one not interested in the matter in dispute, who is properly authorized by the commissioner. 8

Watts, R. 406, 524. It ought to answer all the interrogatories, and be signed by the witness, when he can write, and by the commissioner. When the witness cannot write, it ought to be so stated, and he should make his mark or cross.

3. Depositions in criminal cases cannot be taken without the consent of the defendant. Vide, generally, 1 Phil. Ev. 286; 1 Vern. 413, note; Ayl. Pand. 206; 2 Supp. to Ves. jr. 309; 7 Vin. Ab. 553; 12 Vin. Ab. 107; Dane's Ab. Index, h. t.; Com. Dig. Chancery, P 8, T 4, T 5; Com. Dig. Testmoigne, C 4.

4. The Act of September 24, 1789, s. 30, 1 Story's L. U. S. 64, directs that when the testimony of any person shall be necessary in any civil cause depending in any district, in any court of the United States, who shall live at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of such district, and to a greater distance from the place of trial than as aforesaid, before the time of trial, or is ancient, or very infirm, the deposition of such person may be taken de bene esse, before any justice or judge of any of the courts of the United States, or before any chancellor, justice, or judge of a supreme or superior court, mayor, or chief magistrate of a city, or judge of a county court or court of common pleas of any of the United States, not being of counsel or attorney to either of the parties, or interested in the event of the cause; provided that a notification from the magistrate before whom the deposition is to be taken, to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, be first made out and served ou the adverse party, or his attorney, as either may be nearest, if either is within one hundred miles of the place of such caption, allowing time for their attendance after being notified, not less than at the rate of one day, Sundays exclusive, for every twenty miles travel . And in causes of admiralty and maritime jurisdiction, or other causes of seizure, when a libel shall be filed, in which an adverse party is not named, and depositions of persons, circumstanced as aforesaid, shall be taken before a claim be put in, the like notification, as aforesaid, shall be given to the person having the agency or possession of the property libelled at the time of the capture or seizure of the same, if known to the libellant. And every person deposing as aforesaid, shall be carefully examined and cautioned, and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given, after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition, or by the deponent in his presence. And the deposition so taken shall be retained by such magistrate, until he deliver the same with his own, hand into the court for which they are taken, or shall, together with a certificate of the reasons as aforesaid, of their being taken, and of the notice, if any given, to the adverse party, be by him, the said magistrate, sealed up and directed to such court, and remain under his seal until opened in court. And any person may be compelled to appear and depose as aforesaid, in the same manner as to appear and testify in court. And in the trial of any cause of admiralty or maritime jurisdiction in a district court, the decree in which may be appealed from, if either party shall suggest to and satisfy the court, that probably it will not be in his power to produce the witnesses, there testifying, before the circuit court, should an appeal be had, and shall move that their testimony shall be taken down in writing, it shall be so done by the clerk of the court. And if an appeal be had, such testimony may be used on the trial of the same, if it shall appear to the satisfaction of the court, which shall try the appeal, that the witnesses are then dead, or gone out of the United States, or to, a greater distance than as aforesaid, from the place where the court is sitting; or that, by reason of age, sickness, bodily infirmity, or imprisonment, they are unable to travel or, appear at court, but not otherwise. And unless the same shall be made to appear on the trial of any cause, with respect to witnesses whose depositions may have been taken therein, such depositions shall not be admitted or used in the cause. Provided, that nothing herein shall be construed to prevent any court of the United States from granting a dedimus potestatem, to take depositions according to common usage, when it may be necessary to prevent a failure or delay of justice; which power they shall severally possess nor to extend to depositions taken in perpetuam rei memoriam, which, if they relate to matters that may be cognizable in any court of the United States, a circuit court, on application thereto made as a court of equity, may, according to the usages in chancery, direct to be taken.

5. The Act of January 24, 1827, 3 Story's L. U. S . 2040, authorizes the clerk of any court of the United States within which a witness resides or where he is found, to issue a subpoena to compel the attendance of such witness, and a neglect of the witness to attend may be punished by the court whose clerk has issued the subpoena, as for a contempt. And when papers are wanted by the parties litigant, the judge of the court within which they are, may issue a subpoena duces tecum, and enforce obedience by punishment as for a contempt. For the form and style of depositions, see Gresl. Eq. Ev. 77.

DEPOSITION, eccl. law. The act of depriving a clergyman, by a competent tribunal, of his clerical orders, to

punish him for some offence, and to prevent his acting in future in his clerical character. Ayl. Par. 206.

DEPOSITOR, contracts. He who makes a deposit.

2. He is generally entitled to receive the deposit from the depositary, but to this rule there are exceptions; as. when the depositor at the time of making the deposit had no title to the property deposited, and the owner claims it from the depositary, the depositor cannot recover it; and for this reason, that he can never be in a better situation than the owner. 1 Barn. & Ald. 450; 5 Taunt. 759. As to the place where the depositor is entitled to receive his deposit, see Story on Bailm. _117−120 1 Bouv. Inst. n. 1063.

DEPREDATION, French law. The pillage which is made of the goods of a decedent. Ferr. Mod. h. t.

DEPRIVATION, ecclesiastical Punishment. A censure by which a clergyman is deprived of his parsonage, vicarage, or other ecclesiastical promotion or dignity. Vide Ayliffe's Parerg. 206; 1 Bl. Com. 393.

DEPUTY. One authorized by an officer to exercise the office or right which the officer possesses, for and in place of the latter.

2. In general, ministerial officers can appoint deputies; Com. Dig. Officer, D 1; unless the office is to be exercised by the ministerial officer in person; and where the office partakes of a judicial and ministerial character, although a deputy may be made for the performance of ministerial acts, one cannot be made for the performance of a judicial act; a sheriff cannot therefore make a deputy to hold an inquisition, under a writ of inquiry, though he may appoint a deputy to serve a writ.,

3. In general, a deputy has power to do every act which his principal might do but a deputy cannot make a deputy.

4. A deputy should always act in the name of his principal. The principal is liable for the deputy's acts performed by him as such, and for the neglect of the deputy; Dane's Ab. vol. 3, c. 76, a. 2; and the deputy is liable himself to the person injured for his own tortious acts. Dane's Ab. Index, h. t.; Com. Dig. Officer, D; Viscount, B. Vide 7 Vin. Ab. 556 Arch. Civ. Pl. 68; 16 John. R. 108.

DEPUTY OF THE ATTORNEY GENERAL. An officer appointed by the attorney general, who is to hold his office during the pleasure of the latter, and whose duty it is to perform, within a specified district, the duties of the attorney general. He must be a member of the bar. In Pennsylvania, by an act of assembly, passed May 3, 1850, district attorneys are elected by the people, who are required to perform the duties which, before that act, were performed by deputies of the attorney general.

DEPUTY DISTRICT ATTORNEYS. The Act of Congress of March 3, 1815, 2 Story L. U. S. 1530, authorizes and directs the district attorneys of the United States to appoint by warrant, an attorney as their substitute or deputy in all cases when necessary to sue or prosecute for the United States, in any of the state or county courts, by that act invested with certain jurisdiction, within the sphere of whose jurisdiction the said district attorneys do not themselves reside or practice; and the said substitute or deputy shall be sworn or affirmed to the faithful execution of his duty.

DERELICT, common law. This term is applied in the common law in a different sense from what it bears in the civil law. In the former it is applied to lands left by the sea.

2. When so left by degrees the derelict land belongs to the owner of the soil adjoining but when the sea retires suddenly, it belongs to the government. 2 Bl. Com. 262 1 Bro. Civ. Law, 239; 1 Sumn. 328, 490 1 Gallis. 138; Bee, R. 62, 178, 260; Ware, R. 332.

DERELICTO, civil law. Goods voluntarily abandoned by their owner; he must, however, leave them, not only sine spe revertendi, but also sine animzo revertendi; his intention to abandon them may be inferred by the great length of time during which he may have been out of possession, without any attempt to regain them. 1 Bro. Civ. Law, 239; 2 Bro. Civ. Law, 51; Wood's Civ. Law, 156; 19 Amer. Jur. 219, 221, 222 Dane's Ab. Index, h. t.; 1 Ware's R. 4 1.

DERIVATIVE. Coming from another; taken from something preceding, secondary; as derivative title, which is that acquired from another person. There is considerable difference between an original and a derivative title. When the acquisition is original, the right thus acquired to the thing becomes property, which must be unqualified and unlimited, and since no one but the occupant has any right to the thing, he must have the whole right of disposing of it. But with regard to derivative acquisition, it may be otherwise, for the person from whom the thing is acquired may not have an unlimited right to it, or he may convey or transfer it with certain reservations of right. Derivative title must always be by contract.

2. Derivative conveyances are, those which presuppose some other precedent conveyance, and serve only to

enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance, 3 Bl. Com. 321.

DERIVATIVE POWER. An authority by which one person enables another to do an act for him. See Powers.

DEROGATION, civil law. The partial abrogation of a law; to derogate from a law is to enact something which is contrary to it; to abrogate a law is' to abolish it entirely. Dig. lib. 50, t. 17, 1. 102. See Abrogation.

DESCENDANTS. Those who have issued from an individual, and include his children, grandchildren, and their children to the remotest degree. Ambl. 327 2 Bro. C. C. 30; Id. 230 3 Bro. C. C. 367; 1 Rop. Leg. 115; 2 Bouv. n. 1956.

2. The descendants form what is called the direct descending line. Vide Line. The term is opposed to that of ascendants. (q. v.)

3. There is a difference between the number of ascendants and descendants which a man may have every one his the same order of ascendants, though they may not be exactly alike as to numbers, because some may be descended from a common ancestor. In the line of descendants they fork differently, according to the number of children and continue longer or shorter as generations continue or cease to exist. Many families become extinct, while others continue; the line of descendants is therefore diversified in each family.

DESCENDER. In the descent; as formedon in the descender. Bac. Ab. Formedon, A 1. Vide Formedon.

DESCENT. Hereditary succession. Descent is the title, whereby a person, upon the death of his ancestor, acquires the estate of the latter, as his heir at law: This manner of acquiring title is directly opposed to that of purchase. (q. v.) 2 Bouv. Inst. n. 1952, et seq.

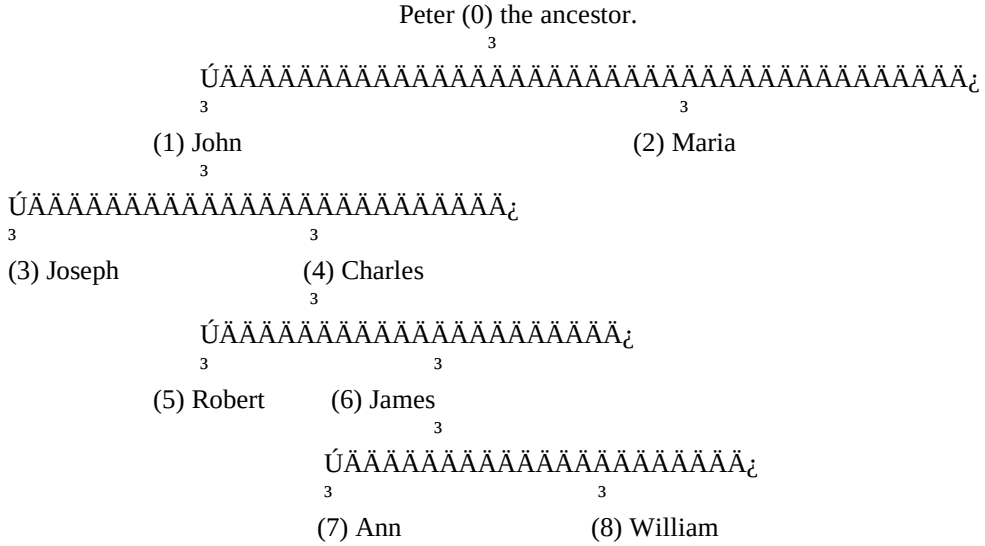
2. It will be proper to consider, 1. What kind of property descends; and, 2. The general rules of descent.

3. − _1. All real estate, and all freehold of inheritance in land, descend to the heir. And, as being accessory to the land and making a part of the inheritance, fixtures, and emblements, and all things annexed to, or connected with the land, descend with it to the heir. Terms for years, and other estates less than freehold, pass to the executor, and are not subjects of descent. It is a rule at common law that no one can inherit read estate unless he was heir to the person last seised. This does not apply as a general rule in the United States. Vide article Possessio fratris.

4. − _2. The general rules of the law of descent. 1. It is a general rule in the law of inheritance, that if a person owning real estate, dies seised, or as owner, without devising the same, the estate shall descend to his descendants in the direct line of lineal descent, and if there be but one person, then to him or her alone; and if more than one person, and all of equal degree of consanguinity to the ancestor, then the inheritance shall descend to the several persons as tenants in common in equal parts, however remote from the intestate the common degree of consanguinity may be. This rule is in favor of the equal claims of descending line, in the same degree, without distinction of sex, and to the exclusion of all other claimants. The following example will, illustrate it; it consists of three distinct cases: 1. Suppose Paul shall die seised of real estate, leaving two sons and a daughter, in this case the estate would descend to them in equal parts; but suppose, 2. That instead of children, he should leave several grandchildren, two of them the children of his son Peter, and one the son of his son John, these will inherit the estate in equal proportions; or, 3. Instead of children and grandchildren, suppose Paul left ten great grandchildren, one the lineal descendant of his son John, and nine the descendants of his son Peter; these, like the others, would partake equally of the inheritance as tenants in common. According to 'Chancellor Kent, this rule prevails in all the United States, with this variation, that in Vermont the male descendants take double the share of females; and in South Carolina, the widow takes one−third of the estate in fee; and in Georgia, she tales a child's share in fee, if there be any children, and, if none, she then takes in each of those states, a moiety of the estate. In North and South Carolina, the claimant takes in all cases, per stirpes, though standing in the same degree. 4 Kent, Com. 371; Reeves' Law of Desc. passim; Griff. Law Reg., answers to the 6th interr. under the head of each state. In Louisiana the rule is, that in all cases in which representation is admitted, the partition is made by roots; if one root has produced several branches, the subdivision is also made by root in each branch, and the members of the branch take between them by heads. Civil Code, art. 895.

5. − 2. It is also a rule, that if a person dying seised, or as owner of the land, leaves lawful issue of different degrees of consanguinity, the inheritance shall descend to the children and grandchildren of the ancestor, if any be living, and to the issue of such children and grandchildren as shall be dead, and so on to the remotest degree, as tenants in common; but such grandchildren and their descendants, shall inherit only such share as their parents respectively would have inherited if living. This rule may be illustrated by the following example: 1. Suppose Peter, the ancestor, had two children; John, dead, (represented in the following diagram by figure 1,) and Maria,

living (fig. 2); John had two children, Joseph, living, (fig. 3,) and Charles, dead (fig. 4); Charles had two children, Robert, living, (fig. 5,) and James, dead (fig. 6.); James had two children, both living, Ann, (fig. 7,) and William, (fig. 8.)



In this case Maria would inherit one−half; Joseph, the son of John, one−half of the half, or quarter of the whole; Robert, one−eighth of the whole; and Ann and William, each one−sixteenth of the whole, which they would hold as tenants in common in these proportions. This is called inheritance per stirpes, by roots, because the heirs take in such portions only as their immediate ancestors would have inherited if living.

6. − 3. When the owner of land dies without lawful issue, leaving parents, it is the rule in some of the states, that the inheritance shall. ascend to them, first to the father, and then to the mother, or jointly to both, under certain regulations prescribed by statute.

7. − 4. When the intestate dies without issue or parents, the estate descends to his brothers and sisters and their representatives. When there are such relations, and all of equal degree of consanguinity to the intestate, the inheritance descends to them in equal parts, however remote from the intestate the common degree of consanguinity may be. When all the heirs are brothers and sisters, or all of them nephews and nieces, they take equally. When some are dead who leave issue, and some are living, then those who are living take the share they would have taken if all had been living, and the descendants of those who are dead inherit only the share which their immediate parents would have received if living. When the direct lineal descendants stand in equal degrees, they take per capita, by the head, each one full share; when, on the contrary, they stand in different degrees of consanguinity to the common ancestor, they take per stirpes, by roots, by right of representation. It is nearly a general rule, that the ascending line, after parents, is postponed to the collateral line of brothers and sisters. Considerable difference exists in the laws of the several states, when the next of kin are nephews and nieces, and uncles and aunts claim as standing in the same degree. In many of the states, all these relations take equally as being next of kin; this is the rule in the states of New Hampshire, Vermont, (subject to the claim of the males to a double portion as above stated,) Rhode Island, North Carolina, and Louisiana. In Alabama, Connecticut, Delaware, Georgia, Indiana, Illinois, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, New York, Ohio, Pennsylvaaia, South Carolina, Tennessee, and Virginia, on the contrary, nephews and nieces take in exclusion of uncles and aunts, though they be of equal degree of consanguinity to the intestate. In Alabama, Connecticut, Georgia, Maryland, New Hampshire, Ohio, Rhode Island, and Vermont, there is no representation among collaterals after the children of brothers and sisters in Delaware, none after the grandchildren. of brothers and sisters. In Louisiana, the ascending line must be exhausted before the estate passes to collaterals, Code, art. 910. In North Carolina, claimants take per stirpes in every case, though they stand in equal degree of consanguinity to the common ancestor. As to the distinction between whole and half blood, vide Half blood.

8. − 5. Chancellor Kent lays it down as a general rule in the American law of descent, that when the intestate has left no lineal descendants, nor parents, nor brothers, nor sisters, or their descendants, that the grandfather takes the estate, before uncles and aunts, as being nearest of kin to the intestate.

9. − 6. When the intestate dies leaving no lineal descendants, nor parents, nor brothers, nor sisters, nor any of their descendants, nor grand parents, as a general rule, it is presumed, the inheritance descends to the brothers and sisters, of both the intestate's parents, and to their descendants, equally. When they all stand in equal degree to the intestate, they take per capita, and when in unequal degree, per stirpes. To this general rule, however, there are sligbt variations in some of the states, as, in Now York, grand parents do not take before collaterals.

10. − 7. When the inheritance came to the intestate on the part of the father, then the brothers and sisters of the father and their descendant's shall have the preference, and, in default of them, the estate shall descend to the brothers and sisters of the mother, and their descendants and where the inheritance comes to the intestate on the part of his mother, then her brothers and sisters, and their descendants, have a preference, and in default of them, the brothers and sisters on the side of the father, and their descendants, inherit. This is the rule in Connecticut, New Jersey, New York, North Carolina, Ohio, Rhode island, Tennessee, and Virginia. In Pennsylvania, it is provided by act of assembly, April 8, 1833, that no person who is not of the blood of the ancestors or other relations from whom any real estate descended, or by whom it was given or devised to the intestate, shall in any of the cases before mentioned, take any estate of inheritance therein, but such real estate subject to such life estate as may be in existence by virtue of this act, shall pass to and vest in such other persons as would be entitled by this act, if the persons not of the blood of such ancestor, or other relation, had never existed, or were dead at the decease of the intestate. In some of the states there is perhaps no distinction as to the descent, whether they have been acquired by purchase or by descent from an ancestor.

11. − 8. When there is a failure of heirs under the preceding rules, the inheritance descends" to the remaining next of kin of the intestate, according to the rules in the statute of distribution of the personal estate, subject to the doctrine in the preceding rules in the different states as to the half blood, to ancestral estates, and as to the equality of distribution. This rule prevails in several states, subject to some peculiarities in the local laws of descent, which extend to this rule.

12. It is proper before closing this article, to remind the reader, that in computing the degrees of consanguinity, the civil law is followed generally in this country, except in Norrh Carolina, where the rules of the common law in their application to descents are adopted, to ascertain the degree of consanguinity. Vide the articles Branch; Consanguinity; Degree; Line.

DESCRIPTIO PERSONAE. Description of the person. In wills, it frequently happens, that the word heir is used as a descriptio personae; it is then a sufficient designation of the person.

DESCRIPTION. A written account of the state and condition of personal property, titles, papers, and the like. It is a kind of inventory, (q. v.) but is more particular in ascertaining the exact condition of the property, and is without any appraisement of it.

2. When goods are found in the possession of a person accused of stealing them, a description ought to be made of them. Merl. Rep. h. t.

3. A description is less perfect than a definition. (q. v.) It gives some knowledge of the accidents and qualities of a thing; for example, plants, fruits, and animals, are described by their shape, bulk, color, and the like accidents. Ayl. Pand. 60.

4. Description may also be of a person, as description of a legatee. 1 Roper on Leg. chap. 2.

DESERTER. One who abandons his post; as, a soldier who abandons the public service without leave; or a sailor who abandons a ship when he has engaged to serve.

DESERTION, crim. law. An offence which consists in the abandonment of the public service, in the army or navy, without leave.

2. The Act of March 16, 1802, s. 19, enacts, that if any non−commissioned officer, musician, or private, shall desert the service of the United Staies, he shall, in addition to the penalties mentioned in the rules and articles of war, be liable to serve for and during such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall and may be tried by a court−martial, and punished, although the term of his enlistment may have elapsed previous to his being apprehended or tried.

3. By the articles of war, it is enacted, that "any non−commissioned officer or soldier who shall, without leave from his commanding officer, absent himself from his troop, company, or detachment, shall, upon being convicted

thereof, be punished, according to the nature of his offence, at the discretion of a court−martial." Art. 21.

4. By the articles for the government of the navy, art. 16, it is enacted, that "if any person in the navy shall desert to an enemy, or rebel, he shall suffer death;" and by art. 17, "if any person in the navy shall desert, or shall entice others to desert, he shall suffer death, or such other punishmemt as a court−martial shall adjudge."

DESERTION, torts. The act by which a man abandons his wife and children, or either of them.

2. On proof of desertion, the courts possess the power to grant the 'Wife, or such children as have been deserted, alimony (q. v.)

DESERTION, MALICIOUS. The act of a hushand or wife, in leaving a consort, without just cause, for the purpose of causing a perpetual separation. Vide Abandonment, malicious.

DESERTION OF SEAMEN, contracts. The abandonment, by a sailor, of a ship or vessel, in which he engaged to perform a voyage, before the expiration of his time, and without leave.

2. Desertion, without just cause, renders the sailor liable, on his shipping articles, for damages, and will, besides, work a forfeiture of his wages previously earned.

3 Kent, Com. 155. It has been decided, in England, that leaving the ship before the completion of the voyage is not desertion, in the case, 1. Of the seaman's entering into the public service, either voluntarily or by impress; and 2. When he is compelled to leave it by the inhuman treatment of the captain. 2 Esp. R. 269; 1 Bell's Com. 514, 5th ed.; 2 Rob. Adm. R. 232.

DESIGNATIO PERSONAE. The persons described in a contract as being parties to it.

2. In all contracts, under seal, there must be some designatio personae. In general, the names of the parties,appear in the body of the deed, "between A B of, &c., of the one part, and C D of, &c., of the other part," being the common formula. But there is a sufficient designation and description of the party to be charged, if his name is written at the foot of the instrument.

3. A deed alleged to have been made between plaintiff and defendant began as follows: "Tis agreed that a gray nag bought of A B by C D shall run twenty five miles in two hours for X, In witness whereof, we have hereunto set our hands and seals." The plaintiff and defendant subscribed their names at the bottom of the writing, and afterwards sealed and delivered the document as their deed. Held, that the omission to state the names of the contracting parties in the body of the instrument, was supplied by the signatures at the bottom, and it sufficiently appeared whose deed it was. 1 Raym. 2; 1 Salk. 214 2 B. & P. 339.

4. When a person is described in the body of the instrument by the name of James, and he signs the name of John, on being sued by the latter name he cannot deny it. 3 Taunt. 505; Cro. Eliz. 897, n. (a.) Vide 11 Ad. & Ell. 594; 3 P. & D. 271.

DESIGNATION, wills. The expression used by a testator, instead of the name of the person or the thing he is desirous to name; for example, a legacy to. the eldest son of such a person, would be a designation of the legatee. Vide 1 Rop. Leg. ch. 2.

2. A bequest of the farm which the testator bought of such a person; or of the picture he owns, painted by such an artist, would be a designation of the thing devised or bequeathed.

DESPACHEURS. The name given, in some countries, to persons appointed to settle cases of average. Ord. Hamh. t. 21, art. 10.

DESPATCHES. Official communications of official Persons, on the affairs of government.

2. In general, the bearer of despatches is entitled to all the facilities that can be given him, in his own country, or in a neutral state; but a neutral cannot, in general, be the bearer of despatches of one of the belligerent parties. 6 C. Rob. 465 see 2 Dodson, 54; Edw. 274.

DESPERATE. Of which there is no hope.

2. This term is used frequently, in making an inventory of a decedent's effects, when a debt is considered so bad that there is no hope of recovering it. It is then called a desperate debt, and, if it be so returned, it will be prima facie, considered as desperate. See Toll. Ex. 248 2 Williams, Ex. 644; 1 Chit. Pr. 580. See Sperate.

DESPITUS. This word signifies, in our ancient law books, a contemptible person. Flet. lib. 4, c. 5, _4. The English word despite is derived from it, which signifies spite or contempt against one's will − defiance with contempt, or contempt of opposition.

DESPOT. This word, in its most simple and original acceptation, signifies master and supreme lord; it is synonymous with monarch; but, taken in bad part, as it is usually employed, it signifies a tyrant. In some states, despot is the title given to the sovereign, as king is given in others. Encyc. Lond.

DESPOTISM, government. That abuse of government, where the sovereign power is not divided, but united in the hands of a single man, whatever may be his official title. It is not, properly, a form of government. Toull. Dr. Civ. Fr. tit. prel. n. 32; Rutherf Inst. b. 1, c. 20, _1. Vide Tyranny; Tyrant.

DESRENABLE, Law French. Unreasonable. Britt. c. 121.

DESTINATION. The application which the testator directs shall be made of the legacy he gives; for example, when a testator gives to a hospital a sum of money, to be applied in erectiug buildings, he is said to give a destination to the legacy. Destination also signifies the intended application of a thing. Mill stones, for example, taken out of a mill to be picked, and to be returned, have a destination, and are considered as real estate, although detached from the freehold. Heir looms, (q. v.) although personal chattels, are, by their destination, considered real estate and money agreed or directed to be laid out in land, is treated as real property. Newl. on Contr. ch. 8; Fonbl. Eq. B. 1, c. 6, _9; 3 Wheat. R. 577; 2 Bell's Com. 2; Ersk. Inst. 2 _14. Vide Mill.

2. When the owner of two adjoining houses uses, during his life, the property in such a manner as to make one property subject to the other, and devises one property to one person, and the other to another, this is said not to be an easement or servitude, but a destination by the former owner. Lois des Bat. partie 1, c. 4, art. 3, _3; 5 Har. & John. 82. See Dedication.

DESTINATION, com. law. The port at which a ship is to end her voyage is called her port of destination. Pard. n. 600.

DESUETUDE. This term is applied to laws which have become obsolete. (q.v.)

DETAINER. 1. The act of keeping a person against his will, or of keeping goods or property. All illegal detainers of the person amount to false imprisonment, and may be remedied by habeas corpus.

2. − 2. A detainer or detention of goods is either lawful or unlawful; when lawful, the party having possession of them cannot be deprived of it. The detention may be unlawful, although the original taking was lawful; as when goods were distrained for rent, and the rent was −afterwards paid; or when they 'Were pledged, and the money borrowed, and interest were afterwards paid; in these, and the like cases, the owner should make a demand, (q. v.) and if the possessor refuse to restore them, trover, detinue, or replevin will lie, at the option of the plaintiff.

3. − 3. There may also be a detainer of land and this is either lawful and peaceable, or unlawful and forcible. 1. The detainer is lawful where the entry has been lawful, and the estate is held by virtue of some right. 2. It is unlawful and forcible, where the entry has been unlawful, and with force, and it is retained, by force, against right; or even when the entry has been peaceable and lawful, if the detainer be by force, and against right; as, if a tenant at will should detain with force, after the will has determined, he will be guilty of a forcible detainer. Hawk. P. C. ch. 64, s. 22; 2 Chit. Pr. 288; Com. Dig, B. 2; 8 Cowen, 216; 1 Hall, 240; 4 John. 198; 4 Bibb, 501. A forcible detainer is a distinct offence from a forcible entry. 8 Cowen, 216. See Forcible entry and detainer.

4. − 4. A writ or instrument, issued or made by a competent officer, authorizing the keeper of a prison to keep in his custody a person therein named. A detainer may be lodged against. one within the walls of a prison, on what account soever he is there. Com. Dig. Process, E 3 b.

DETENTION. The act of retaining a person or property, and preventing the removal of such person or property.

2. The detention may be occasioned by accidents, as, the detention of a ship by calms, or by ice; or it may, be hostile, as the detention of persons or ships in a foreign country, by order of the government. In general, the detention of a ship does not change the nature of the contract, and therefore, sailors will be entitled to their wages during the time of the detention. 1 Bell's Com. 517, 519, 5th ed.; Mackel. Man. _210.

3. A detention is legal when the party has a right to the property, and has come lawfully into possession. It is illegal when the taking was unlawful, as is the case of forcible entry and detainer, although the party may have a right of possession; but, in some, cases, the (retention may be lawful, although the taking may have been unlawful. 3 Penn. St. R. 20. When the taking was legal, the detention may be illegal; as, if one borrow a horse, to ride from A to B, and afterwards detain him from the owner, After demand, such detention is unlawful, and the owner may either retake his property, or have an actiqn of replevin or detinue. 1 Chit. Pr. 135. In some cases, the detention becomes criminal although the taking was lawful, as in embezzlement.

DETERMINABLE. What may come to an end, by the happening of a contingency; as a determnable fee. See 2 Bouv. Inst. n. 1695.

DETERMINABLE FEE. Also called a qualified or base fee, is one which has a quality subjoined to it, and which must be determined whenever the qualification annexed to it is at in end. A limitation to a man and his heirs on the part of his father, affords an example of this species of estate. Litt. _254; Co. Litt. 27 a, 220; 1 Prest. on

Estates, 449; 2 Bl. Com. 109; Cruise, tit 1, _82; 2 Bouv. Inst; n., 1695.

DETERMINATE. That which is ascertained; what is particularly designated; as, if I sell you my horse Napoleon, the article sold is here determined. This is very different from a contract by which I would have sold you a horse, without a particular designation of any horse. 1 Bouv. Inst. n. 947, 950.

DETERMINATION. The end, the conclusion, of a right or authority; as, the determination of a lease. 1 Com. Dig. Estates by Grant, G 10, 11, and 12.. The determination of an authority is the end of the authority given; the end of the return day of a writ determines the authority of the sheriff; the death of the principal determines the authority of a mere attorney. By determination is also understood the decision or judgment of a court of justice.

DETINET. He detains. Vide Debet et Detinet, and Detinuit.

DETINUE, remedies. The name of an action for the recovery of a personal chattel in specie. 3 Bl. Com. 152; 3 Bouv. Inst. n. 3472; 1 J. J. Marsh. 500.

2. This action may be considered, 1. With reference to the nature of the thing to be recovered. 2. The plaintiff's interest therein. 3. The injury. 4. The pleadings. 5. The judgment.

3.− 1. The goods which it is sought to recover, must be capable of being distinguished from all others, as a particular horse, a cow, &c., but not for a bushel of grain. Com. Dig. Detinue, B, C; 2 Bl. Com. 152; Co. Litt. 286 b; Bro. Det. 51. Detinue cannot be maintained where the property sued for had ceased to exist when the suit was commenced. 2 Dana, 332. See 5 Stew. & Port. 123; 1 Ala. R. 203.

4. − 2. To support this action, the plaintiff must have a right to immediate possession, although he never had actual possession; a reversioner cannot, therefore, maintain it. A bailee, who has only a special property, may nevertheless support it when he delivered the goods to the defendant, or they were taken out of the bailee's custody. 2 Saund. 47, b, c, d Bro. Ab. h. t.; 9 Leigh, R. 158; 1 How. Miss. R. 315; 5 How. Miss. R. 742; 4 B. Munr. 365.

5. − 3. The gist of the action is the wrongful detainer, and not the original taking. The possession must have been acquired by the defendant by lawful means, as by delivery, bailment, or. finding, and not tortiously. Bro. Abr.])et. 53, 36, 21 1 Misso. R. 749. But a demand is not requisite, except for the purpose of entitling the plaintiff to damages for the detention between the time of the demand and that of the commencement of the action. 1 Bibb, 186; 4 Bibb, 340; 1 Misso. 9; 3 Litt. 46.

6. − 4. The plaintiff may declare upon a bailment or a trover; but the practice, by the ancient common law, was to allege, simply, that the goods came to the hands, &c., of the defendant without more. Bro. Abr. Det. 10, per Littleton; 33 H. VI. 27. The trover, or finding, when alleged, was not traversable, except when the defendant alleged delivery over of a chattel actually found to a third person, before action brought, in excuse of the detinue. Bro. Abr. Det. 1, 2. Nor is the bailment traversable, but the defendant must answer to the detinue. Bro. Abr. Det. 50−1. In describing the things demanded, much certainty is requisite, owing to the nature of the execution. A declaration for "a red cow with a white face," is not supported by proof that the cow was a yellow. or sorrel cow. 1 Scam. R. 206. The general issue is non detinet, and under it special matter may be given in evidence. Co. Litt. 283.

7. − 5. In this action the defendant frequently prayed garnishment of a third person, whom he alleged owned or had an interest in the thing demanded; but this he could not do without confessing the possession of the thing de− manded, and made privity of bailment. Bro. Abr. Garnishment, 1; Interpleader, 3. If the prayer of garnishment was allowed, a sci. fac. issued against the person named as garnishee. If he made default, the plaintiff recovered against, the defendant the chattel demanded, but no damages. If the garnishee appeared and the plaintiff made default, the garnishee recovered. If both appeared, and the plaintiff recovered; he had judgment against the defendant for the chattel demanded, and a distringas in execution and against the garnishee a judgment for damages, and a fi. fa. in execution. The verdict and judgment must be such, that a special remedy may be had for the recovery of the goods detained, or a satisfaction in value for each parcel, in case they, or either of them, cannot be returned. Walker, R. 538 7 Ala. R. 189; 4 Yerg. R. 570 4 Monr. 59; 7 Ala. R., 807.; 5 Miss. R. 489; 6 Monr. 52 4 Dana, 58; 3 B. Munr. 313; 2 Humph. 59. The judgment is in the alternative, that the plaintiff recover the goods or the value thereof, if he cannot have the goods themselves, and his damages. Bro. Abr. Det. 48, 26, 3, 25; 4 Dana, R. 58; 2 Humph. 59; 3 B. Mont. 313, for the detention and full costs. Vide, generally, 1 Chit. Pl. 117; 3 Bl. Com. 152; 2 Reeve's Hist. C. L. 261, 333, 336; 3 Id. 66, 74; Bull. N. P. 50. This action has yielded to the more practical and less technical action of trover. 3 Bl. Com. 152.

DETINUIT, practice. He detained.

2. Where an action of replevin is instituted for goods which the defendant had taken, but which he afterwards restored, it is said to be brought in the detinuit; in such case the judgment is, that the plaintiff recover the damages assessed by the jury for the taking and unjust detention, or for the latter only, where the former was justifiable, and his costs. 4 Bouv. Inst. n. 3562. 3. When the replevin is in the detinet, that he detains the goods, the jury must find in addition to the above, the value of the chattels, (assuming they are still detained, not in a gross sum, but each separate article must be separately valued, for perhaps the defendant may restore some of them, in which case the plaintiff is to recover the value of the remainder. Vide Debet et Detinet.

DEVASTAVIT. A devastavit is a mis−management and waste by an executor, administrator, or other trustee of the estate and effects trusted to him, as such, by which a loss occurs.

2. It takes place by direct abuse, by mal−administration, and by neglect.

3. − _1. By direct abuse. This takes place when the executor, administrator, or trustee, sells, embezzles, or converts to his own use, the goods entrusted to him; Com. Dig. Administration, I 1; releases a claim due to the estate; 8 Bac. Abr. 700; Hob. 266; Cro. Eliz. 43; 7 John. R. 404; 9 Mass. 352; or surrenders a lease below its value. 2 John. Cas. 376; 3 P. Wms. 330. These instances sufficiently show that any wilful waste of the property will be considered as a direct devastavit.

4. − _2. By mal−administration. Devastavit by mal−administration most frequently occurs by the payment of claims which were not due nor owing; or by paying others out of the order in which they ought to be paid; or by the payment of legacies before all the, debts have been satisfied. 4 Serg. & Rawle, 394; 5 Rawle, 266.

5. − _3. By neglect. Negligence on the part of an executor, administrator, or trustee, may equally tend to the waste of the estate, as the direct destruction or mal−administration of the assets, and render him guilty of a devastavit. The neglect to sell the goods at a fair price, within a reasonable time, or, if they are perishable goods, before they are wasted, will be a devastavit. And a neglect to collect a doubtful debt, which by proper exertion might have been collected, will be so considered. Bac. Ab. Executors, L.

6. The law requires from trustees, good faith and due diligence, the want of which is punished by making them responsible for the losses which may be sustained by the property entrusted to them when, therefore, a party has been guilty of a devastavit, he is required to. make up the loss out of his own estate. Vide Com. Dig. Administration, I; 11 Vin. Ab. 306; 1 Supp. to Ves. jr. 209; 1 Vern. 328; 7 East, R. 257 1 Binn. 194; 1 Serg. & Rawle, 241 1 John. R. 396; 1 Caines' Cas. 96 Bac. Ab. Executor, L; 11 Toull. 58, 59, n. 48.

DEVIATION, insurance, contracts. A voluntary departure, without necessity, or any reasonable cause, from the regular and usual course of the voyage insured.

2. From the moment this happens, the voyage is changed, the contract determined, and the insurer discharged from all subsequent responsibility. By the contract, the insurer only runs the risk of the contract agreed upon, and no other; and it is, therefore, a condition implied in the policy, that the ship shall proceed to her port of destination by the. shortest and safest course, and on no account to deviate from that course, but in cases of necessity. 1 Mood. & Rob. 60; 17 Ves. 364; 3 Bing. 637; 12 East, 578.

3. The effect of a deviation is not to vitiate or avoid the policy, but only to determine the liability of the underwriters from the time of the deviation. If, therefore, the ship or goods, after the voyage has commenced, receive damage, then the ship deviates, and afterwards a loss happen, there, though the insurer is discharged from the time of the deviation, and is not answerable for the subsequent loss, yet he is bound to make good the damage sustained previous to the deviation. 2 Lord Raym. 842 2 Salk. 444.

4. But though he is thus disebarged from subsequent responsibility, he is entitled to retain the whole premium. Dougl. 271; 1 Marsh. Ins. 183; Park. Ins. 294. See 2 Phil. Ev. 60, n. (b) where the American cases are cited.

5. What amounts to a deviation is not easily defined, but a departure from the usual course of the voyage, or remaining at places where the ship is authorized to touch, longer than necessary, or doing there what the insured is not authorized to do; as, if the ship have merely liberty to touch at a point, and the insured stay there to trade, or break bulk, it is a deviation. 4 Dall. 274 1 Peters' C. C. R. 104; Marsh. Ins. B. 1, c. 6, s. 2. By the course of the voyage is not meant the shortest course the ship can take from her port of departure to her port of destination, but the regular and customary track, if such there be, which long us usage has proved to be the safest and most convenient. 1 Marsh. Ins. 185. See 3 Johns. Cas. 352; 7 T. R. 162.

6. A deviation that will discharge the insurer, must be a voluntary departure from the usual course of the voyage insured, and not warranted by any necessity. If a deviation can be justified by necessity, it will not affect the contract; and necessity will justify a deviation, though it proceed from a cause not insured against. The cases of

necessity which are most frequently adduced to justify a departure from the direct or usual course of the voyage, are, 1st. Stress of weather. 2d. The want of necessary repairs. 3d. Joining convoy. 4th. Succouring ships in distress. 5th. Avoiding capture or detention. 6th. Sickness of the master or mariner. 7th. Mutiny of the crew. See Park, Ins. c. 17; 1 Bouv. Inst. n. 1187, et seq.; 2 John. Cas. 296; 11 Johns. R. 241; Pet. C. C. R. 98; 2 Johns. Rep. 89; 14 Johns. R. 315; 2 Johns. R. 138; 9 Johns. R. 192; 8 Johns. Rep. 491; 13 Mass. 68 13 Mass. 539; Id. 118; 14 Mass. 12 1 Johns. Cas. 313; 11 Johns. R. 241; 3 Johns. R. 352; 10 Johns. R. 83; 1 Johns. R. 301; 9 Mass. 436, 447; 3 Binn. 457 7 Mass. 349; 5 Mass. 1; 8 Mass. 308 6 Mass. 102 121 6 Mass. 122 7 Cranch, 26; Id. 487; 3 Wheat. 159 7 Mass. 365; 10 Mass. 21 Id. 347 7 Johns. Rep. 864; 3 Johns. R. 352; 4 Dall. R. 274 5 Binn. 403; 2 Serg. & Raw. 309; 2 Cranch, 240.

DEVIATION, contracts. When a plan has been adopted for a building, and in the progress of the work a change has been made from the original plan, the change is called a deviation.

2. When the contract is to build a house according to the original plan, and a deviation takes place, the contract shall be traced as far as possible, and the additions, if any have been made, shall be paid for according to the usual rate of charging. 3 Barn. & Ald. 47; and see 1 Ves. jr. 60; 10 Ves. jr. 306; 14 Ves. 413; 13 Ves. 73; Id. 81 6 Johns. Ch. R. 38; 3 Cranch, 270; 5 Cranch, 262; 3 Ves. 693; 7 Ves. 274; Chit. Contr. 168; 9 Pick. 298.

3. The Civil Code of Louisiana, art. 2734, provides, that when an architect or other workman has undertaken the building of a house by the job, according to a plot agreed on between him and the owner of the ground, he cannot claim an increase of the price agreed on, on the plea of the original plot having been changed and extended, unless he can prove that such changes have been made in compliance with the wishes of the proprietor.

DEVISAVIT VEL NON, practice. The name of an issue sent out of a court of chancery, or one which exercises chancery jurisdiction, to a court of law, to try the validity of a paper asserted and denied to be a will, to ascertain whether or not the testator did devise, or whether or not that paper was his will. 7 Bro. P. C. 437; 2 Atk. 424; 5 Barr, 21.

DEVISE. A devise is a disposition of real property by a person's last will and testament, to tale effect after the testator's death.

2. Its form is immaterial, provided the instrument is to take effect after the death of the party; and a paper in the form of an indenture, which is to have that effect, is considered as a devise. Finch. 195 6 Watts, 522; 3 Rawle, 15; 4 Desaus. 617, 313; 1 Mod. 117; 1 Black. R. 345.

3. The term devise, properly and technically, applies only to real estate the object of the devise must therefore be that kind of property. 1 Hill. Ab. ch. 36, n. 62 to 74. Devise is also sometimes improperly applied to a bequest or legacy. (q. v.) Vide 2 Bouv. Inst. n. 2095, et seq; 4 Kent, Com. 489 8 Vin. Ab. 41 Com. Dig. Estates by Devise.

4. In the Year Book, 9 H. VI. 24, b. A. D. 1430, Babington says, the nature of a devise, when lands are devisable, is, that one can devise that his lands shall be sold by executors and this is good. And a devise in such form has always been in use. And so a man may have frank tenement of him who had nothing, in the same manner as one may have fire from a flint, and yet there is no fire in the flint. But it is to perform the last will of the devisor.

DEVISEE. A person to whom a devise has been made.

2. All persons who are in rerum natura, and even embryos, may be devisees, unless excepted by some positive law. In general, he who can acquire property by his labor and industry, may receive a devise. C. & N. 353.

DEVISOR. A testator; one, who devises his real estate.

2. As a general rule all persons who. may sell an estate may devise it. The disabilities of devisors may be classed, in three divisions. 1. Infancy. In some of the United States this disability is partially removed; in Illinois, Maryland, Mississippi and Ohio, an unmarried woman at the age of eighteen years may devise. 2. Coverture. In general, a married woman cannot devise; but in. Connecticut and Ohio she may devise her lands; and in Illinois, her separate estate. In Louisiana, she may devise without the consent of her hushand. Code, art. 132. 3. Idiocy and non sane memory. It is evident that a person non compos can make no devise, because he has no will.

3. The removal of the disability which existed at the time of the devise does, not, of itself, render it valid. For example, when the hushand dies, and the wife becomes a feme sole; when one non compos is restored to his sense; and when an infant becomes of age; these several acts do not make a will good, which at its making was void. 11 Mod. 123, 157; 2 Vern . 475; Comb, 84; 4 Rawle, R. 3.36. Vide. Testament or ill.

DEVOIR. Duty. It is used in the statute of 2 Ric. II., c. 3, in the sense of duties or customs.

DEVOLUTION, eccl. law. The transfer, by forfeiture, of a right and power which a person has to another, on account of some act or negligence of the person who is vested with such right or power: for example, when a

person has the right of preseptation, and he does not present within the time prescribed, the right devolves on his next immediate superior. Ayl. Par. 331.

DI COLONNA, mar. contracts. This contract tales place between the owner of a ship, the captain and the mariners, who agree that the voyage shall be for the benefit of all. This is a term used in the Italian law. Targa, oh. 36, 37: Emerigon, Mar. Loans, s. 5.

2. The New England whalers are owned and navigated in this manner, and under this species of contract. The captain and his mariners are all interested in the profits of the voyage in certain proportion, in the same manner as the captain and crew of a privateer, according to the agreement between them. Such agreement, being very common in former times, all the mariners and the masters being interested in the voyage. It is. necessary to know this, in order to understand many of the provisions of the laws of Oleron, Wishuy, the Consolato del Mare, and other ancient codes of maritime and commercial law. Hall on Mar. Loans, 42.

TO DICTATE. To pronounce word for word what is destined to be at the same time written by another. Merlin Rep. mot Suggestion, p. 5 00; Toull. Dr. Civ. Fr. liv. 3, t. 2, c. 5, n. 410.

DICTATOR, civil law. A Magistrate at Rome invested with absolute power. His authority over the lives and fortunes of the citizens was without bounds. His office continued but for six months. Hist. de Ia Jur. h. t.; Dig. l, 2, 18; Id. 1, 1, 1.

DICTUM, practice. Dicta are judicial opinions expressed by the judges on points that do not necessarily arise in the case.

2. Dicta are regarded as of little authority, on account of the manner in which they are delivered; it frequently happening that they are given without much reflection, at the bar, without previous examination. "If," says Huston, J., in Frants v. Brown, 17 Serg. & Rawle, 292, "general dicta in cases turning on special circumstances are to be considered as establishing the law, nothing is yet settled, or can be long settled." "What I have said or written, out of the case trying," continues the learned judge, "or shall say or write, under such circumstances, maybe taken as my opinion at the time, without argument or full consideration; but I will never consider myself bound by it when the point is fairly trying and fully argued and considered. And I protest against any person considering such obiter dicta as my deliberate opinion." And it was considered by another learned judge. Mr. Baron Richards, to be a "great misfortune that dicta are taken down from judges, perhaps incorrectly, and then cited as absolute propositions." 1 Phillim. Rep. 1406; S. C. 1 Eng. Ecc. R. 129; Ram. on Judgm. ch. 5, p. 36; Willes' Rep. 666; 1 H. Bl. 53−63; 2 Bos. & P. 375; 7 T. R. 287; 3 B. & A. 341; 2 Bing. 90. The doctrine of the courts of France on this subject is stated in 11 Toull. 177, n. 133.

3. In the French law, the report of a judgment made by one of the judges who has given it, is called the dictum. Poth. Proc. Civ. partie 1, c. 5, art. 2.

DIES. A day. There are four sorts of days: 1. A natural day; as, the morning and the evening made the first day. 2. An artificial day; that is, from day−break until twilight in the evening. 3. An astrological day, dies astrologicus, from sun to sun. 4. A legal day, which is dies juridicus, and dies non juridicus. 1. Dies juridici, are all days given in term to the parties in court. Dies non juridici are those which are not appointed to do business in court, as Sundays, and the like. Dies in banco, days of appearance in the English court of common bench. 3 Bl. Com. 276. Vide Day, and 3 Com. Dig. 358.

DIES DATUS, practice. A day or time given to a defendant in a suit, which is in fact a continuance of the cause. It is so called when given before a declaration; when it is allowed afterwards it assumes the name of imparlance. (q. v.)

DIES NON or DIES NON JURIDICI. Non−judicial days. Days during which courts do not transact any business, as Sunday. The entry of judgment upon such a day is void. W . Jones, 156.

DIET. An assembly held by persons having authority to manage the public affairs of the nation. In Germany, such assemblies are known by this name:

DIFFERENCE. A dispute, contest, disagreement, quarrel.

DIGEST, civil law. The name sometimes given to the Pandects of Justinian; it is so called because this compilation is reduced to order, quasi digestiae.

2. It is an abridgment of the decisions of the praetors and the works of the learned, and ancient writers on the law. It was made by order of the emperor Justinian, who, in 530, published an ordinance entitled De Conceptione Digestorum, which was addressed to Tribonian, and by which he was required to select some of the most distinguished lawyers to assist him in composing a collection of the best decisions of the ancient lawyers, and

compile them is fifty books, without confusion or contradiction. The work was immediately commenced, and completed on the 16th of December, 533.

3. The Digest is divided in two different ways; the first, into fifty books, each book into several titles, and each title into several laws at the head of each of them is the name of the lawyer from. whose work it was taken.

4. − 1. The first book contains twenty−two titles; the subject of the first is De justicia et jure; of the division of person and things; of magistrates, &c.

5. − 2. The second, divided into fifteen titles, treats of the power of magistrates and their jurisdiction; the manner of commencing suits; of agreements and compromises.

6. − 3. The third, composed of six titles, treats of those who can and those who cannot sue; of advocates and attorneys and syndics; and of calumny.

7. − 4. The fourth, divided into nine titles, treats of causes of restitution of submissions and arbitrations; of minors, carriers by water, innkeepers and those who have the care of the property of others.

8. − 5. In the fifth there are six titles, which. treat of jurisdiction and inofficious testaments.

9. − 6. The subject, of the sixth, in which there are three titles, is actions.

10. − 7. The seventh, in nine titles, embraces whatever concerns usufructs, personal servitudes, babitations, the uses of real estate, and its appurtenances, and of the sureties required of the usufructuary.

11. − 18. The eighth book, in six titles, regulates urban and rural servitudes.

12. − 9. The ninth book, in four titles, explains certain personal actions.

13. − 10. The tenth, in four titles, treats of mixed actions.

14.−11. The object of the eleventh book, containing eight titles, is to regulate interrogatories, the cases of which the judge was to take cognizance, fugitive slaves, of gamblers, of surveyors who made false reports, and of funerals and funeral expenses.

15. − 12. The twelfth book, in seven titles, regulates personal actions in which the plaintiff claims the title of a thing.

16. − 13. The thirteenth, treats of certain particular actions, in seven titles.

17. − 14. This, like the last, regulates certain actions: it has six titles.

18. − 15. The fifteenth, in four titles, treats of actions for which a father or master is liable, in consequence of the acts of his children or slaves, and those to which he is entitled; of the peculium of children and slaves, and of the actions on this right.

19.−16. The sixteenth, in three titles, contains the law. relating to the senatus consultum velleianum, of compensation or set off, and of the action of deposit.

20. − 17. The seventeenth, in two titles, expounds the law of mandates and partnership.

21. − 18. The eigbteenth book, in seven titles, explains the contract of sale.

22. − 19. The nineteenth, in five titles, treats of the actions which arise on a contract of sale.

23. − 20. The law relating to pawns, hypothecation, the preference among creditors, and subrogation, occupy the twentieth book, which contains six titles.

24. − 21. The twenty−first book, explains under three titles, the edict of the ediles relating to the sale of slaves and animals; then what relates to evictions and warranties.

25. − 22. The twenty−second treats of interest, profits and accessories of things, proofs, presumptions, and of ignorance of law and fact. It is divided into six titles.

26. − 23. The twenty−third, in five titles, contains the law of marriage, and its accompanying agreements.

27. − 24. The twenty−fourth, in three titles, regulates donations between hushand and wife, divorces, and their consequence.

28. − 25. The twenty−fifth is a continuation of the subject of the preceding. It contains seven titles.

29. − 26 and 27. These two books, each in two titles, contain the law relating to tutorship and curatorship.

30. − 28. The twenty−eighth, in eight titles, contain’s the law on last wills and testaments.

31. − 29. The twenty−ninth, in seven titles, is the continuation of the twenty−eighth book.

32. − 30, 31, and 32. These three books, each divided into two titles, contain the law of trusts and specific legacies.

33. − 33, 34, and 35. The first of these, divided into ten titles; the second, into nine titles; and the last into three titles, treat of various kinds of legacies.

34. − 36. The thirty−sixth, containing four titles, explains the senatus consultum trebellianum, and the time when

trusts become due.

35. − 37. This book, containing fifteen titles, has two objects first, to regulate successions; and, secondly, the respect which children owe their parents, and freedmen their patrons.

36. − 38. The thirty−eighth book, in seventeen titles, treats of a variety of subjects; of successions, and of the degree of kindred in successions; of possession; and of heirs.

37. − 39. The thirty−ninth explains the means which the law and the prAEtor take to prevent a threatened iNjury; and donations inter vivos and mortis causa.

38. − 40. The fortieth, in sixteen titles, treats of the state and condition of persons, and of what relates to freedmen and liberty.

39. − 41. The different means of acquiring and losing title to property, are explained in the forty−first book, in ten titles.

40. − 42. The forty−second, in eight titles, treats of the res judicata, and of the seizure and sale of the property of a debtor.

41. − 43. Interdicts or possessory actions are the object of the forty−third book, in three titles.

42.−44. The forty−fourth contains an enumeration of defences which arise in consequence of the resjudicata, from the lapse of time, prescription, and the like. This occupies six titles; the seventh treats of obligations and actions.

43. − 45. This speaks of stipulations, by freedmen, or by slaves. It contains only three titles.

44. − 46. This book, in eight titles, treats of securities, novations, and delegations, payments, releases, and acceptilations.

45. − 47. In the forty−seventh book are explained the punishments inflicted for private crimes, de privates delictis, among which are included larcenies, slander, libels, offences against religion, and public manners, removing boundaries, and other similar offences.

46. − 48. This book treats of public crimes, among which are enumerated those Iaesae majestatis, adultery, murder, poisoning, parricide, extortion, and the like, with rules for procedure in such cases.

47. − 49. The forty−ninth, in eighteen titles, t reats of appeals, of the rights of the public treasury, of those who are in captivity, and of their repurchase.

48. − 50. The last book, in seventeen titles, explains the rights of municipalities. and then treats of a variety of public officers.

49. Besides this division, Justinian made another, in which the fifty books were divided into seven parts: The first contains the first four books; the second, from the fifth to the eleventh book inclusive; the third, from the twelfth to the nineteenth inclusive; the fourth, from title twentieth to the twenty−seventh inclusive; the fifth, from the twenty−eighth to the thirty−sixth inclusive the sixth, commenced with the thirty seventh, and ended with the forty−fourth book; and the seventh or last was composed of the last six books.

50. A third division, which, however, is said not to have been made by Justinian, is in three parts. The first, called digestum vetus, because it was the first printed. It commences with the first book, and. includes the work to the end of the second title of the twenty−fourth book. The second, called digestum infortiatum, because it is supported or fortified by the other two, it being the middle; it commences with the begining of the third title of the twenty−fourth book and ends with the thirty−eighth. The third, which begins with the thirty−ninth book and ends with the work, is called digestum novum, because it was last printed.

51. The Digest, although, compiled in Constantinople, was originally written in Latin, and afterwards translated into Greek.

52. This work was lost to all Europe during a considerable period, as indeed all the law works of Justinian were, except some fragments of the Code and Novels. During the pillage of Amalphi, in the war between the two soi−disant popes Innocent II. and Anaclet II., a soldier discovered an old manuscript, which attracted his attention by its envelope of many colors. It was carried to the emperor, Clothaire II., and proved to be the Pandects of Justinian. The work was arranged in its present order by Warner, a German, whose name, Latinised, is Irnerius, who was appointed professor of Roman law at Bologna, by that emperor. 1 Fournel, Hist. des Avocats, 44, 46, 51.

53. The Pandects contain all whatsoever Justinian drew out of 150,000 verses of the old books of the Roman law. The style of the Digest is very grave and pure, and differs not much from the eloquentist speech that ever the Romans used." The learning of the digest stands rather in the discussing of subtle questions of law, and enumeratious of the variety of opinions of ancient lawyers thereupon, than in practical matters of daily use. The

Code of Justinian differs in these respects from, the Digest. It is less methodical, but more practical; the style however, is a barbarous Thracian phrase Latinised, such as never any mean Latinist spoke. The work is otherwise rude and unskilful. Ridley's View of the Civ. & Ecc. Law, pt. 1, ch. 2, _1, and ch. 1, _2.

54. Different opinions are entertained upon the merits of the Digest, or Pandects, Code, Authentics and Feuds, as a system of jurisprudence. By some it has been severely criticised, and even harshly censured, and by others as warmly defended the one party discovering nothing but defects, and the other as obstinately determined to find nothing but what is good and valuable. See Felangieri della Legislazione, vol. 1, c. 7. It must be confessed that it is not without defects. It might have been comprehended in less extent, and in some parts arranged in better order. It must be confessed also that it is less congenial as a whole, with the principles of free government, than the common law of England. Yet, with all these defects, it is a rich fountain of learning and reason; and of this monument of the high culture and wisdom of the Roman jurists it may be said, as of all other works in which the good so much surpasses the bad.

Ut plura intent in carmine non ego paucis
Offendar maculis, quas aut incuria fudit
Aut humana parum cavit natura.

HORAT. ART. POETIC, v. 351.

DIGNITIES. English law. Titles of honor.

2. They are considered as incorporeal hereditaments.

3. The genius of our government forbids their admission into the republic.

DILAPIDATION. Literally, this signifies the injury done to a building by taking stones from it; but in its figurative, which is also its technical sense, it means the waste committed or permitted upon a building.

DILATORY. That which is intended for delay. It is a maxim, that delays in law are odious, dilationes in lege sunt odiosae. Plowd. 75.

DILATORY DEFENCE. chancery practice. A dilatory defence is one, the object of which is to dismiss, suspend, or obstruct the suit, without touching the merits, until the impediment or obstacle insisted on shall be removed.

2. These defences are of four kinds: 1. To the jurisdiction of the court. 2. To the person of the plaintiff or defendant. 3. To the form of proceedings, as that the suit is irregularly brought, or it is defective in its appropriate allegation of the parties; and, 4. To the propriety of maintaining the suit itself, because of the pendancy of another suit for the same controversy. Montag. Eq. Pl. 88; Story Eq. Pl. _434. Vide Defence: Plea, dilatory.

DILATORY PLEAS. Those which delay the plaintiff's remedy, by questioning, not the cause of action, but the propriety of the suit, or the mode in which the remedy is sought. Vide Plea, dilatory.

DILIGENCE, contracts. The doing things in proper time.

2. It may be divided into three degrees, namely: ordinary diligence, extraordinary diligence, and slight diligence. It is the reverse of negligence. (q. v.) Under that article is shown what degree of negligence, or want of diligence, will make a party to a contract responsible to the other. Vide Story, Bailm. Index h. t.; Ayl. Pand. 113 1 Miles, Rep. 40.

DILIGENCE. In Scotland, there are certain forms of law, whereby a creditor endeavors to make good his payment, either by affecting the person of his debtor, or by securing the subjects belonging to him from alienation, or by carrying the property of these subjects to himself. They are either real or personal.

2. Real diligence is that which is proper to heritable or real rights,. and of this kind there are two sorts: 1. Inhibitions. 2. Adjudication, which the law has substituted in the place of apprising.

3. Personal diligence is that by which the person of the debtor may be secured, or his personal estate affected. Ersk. Pr. L. Scotl. B. 2, t. 11, s. 1.

DIME, money. A silver coin of the United States, of the value of one−tenth part of a dollar or ten cents.

2. It weighs forty−one and a quarter grains. Of one thousand parts, nine hundred are of pure silver and one hundred of alloy. Act of January 18, 1837, s. 8 and 9, 4 Sharsw. cont. of Story's L. U. S. 2523−4.

DIMINUTION OF THE RECORD, practice. This phrase signifies that the record from an inferior court, sent up to a superior, is incomplete. When this is the case, the parties may suggest a diminution of the record, and pray a writ of/ certiorari to the justices of the court below to certify the whole record. Tidd's Pr. 1109; 1 S. & R. 472; Co. Ent. 232; 8 Vin. Ab. 552; 1 Lilly's Ab. 245; 1 Nels. Ab. 658; Cro. Jac. 597; Cro. Car. 91; Minor, R. 20; 4 Dev. R. 575; 1 Dey. & Bat. 382; 1 Munf. R. 119. Vide Certiorari.

DIOCESE, eccl. law. The district over which a bishop exercises his spiritual functions. 1 B1. Com. 111.

DIPLOMA. An instrument of writing, executed by, a corporation or society, certifying that a certain person therein named is entitled to a certain distinction therein mentioned.

2. It is usually, granted by learned institutions to their members, or to persons who have studied in them.

3. Proof of the seal of a medical institution and of the signatures of its officers thereto affixed, by comparison with the seal and signatures attached to a diploma received by the witness from the same institution, has been held to be competent evidence of the genuineness of the instrument, although the witness never saw the officers write their names. 25 Wend. R. 469.

4. This word, which is also written duploma, in the civil law, signifies letters issued by a prince. They are so called, it is supposed, a duplicatis tabellis, to which Ovid is thought to allude, 1 Amor. 12, 2, 27, when he says, Tunc ego vos duplices rebus pro nomine sensi Sueton in Augustum, c. 26. Seals also were called Diplomata. Vicat ad verb.

DIPLOMACY., The science which treats of the relations and interests of nations with nations.

DIPLOMATIC AGENTS. This name has been given to public officers, who have been commissioned, according to law, to superintend and transact the affairs of the government which has employed them, in a foreign country. Vattel, liv. 4, c. 5.

2. These agents are of divers orders, and are known by different denominations. Those of the first order are almost the perfect representatives of the government by which they are commissioned; they are legates, nuncios, internuncios, ambassadors, ministers, plenipotentiaries. Those of the second order do not so fully represent their government; they are envoys, residents, ministers, charges d'affaires, and consuls. Vide these several words.

DIPLOMATICS. The art of judging of ancient charters, public documents or diplomas, and discriminating the true from the false. Encyc. Lond. h. t.

DIRECT. Straight forward; not collateral.

2. The direct line of descents for example, is formed by a series of degrees between persons who descend one from another. Civ. Code of Lo. art. 886.

DIRECTION. The order and government of an institution; the persons who compose the board of directors are jointly called the direction. Direction, in another sense, is nearly synonymous with instruction. (q. v.)

DIRECTION, practice. That part of a bill in chancery which contains the address of the bill to the court; this must of course, contain the appropriate and technical description of the court.

DIRECTOR OF THE MINT. An officer whose duties are prescribed by the Act of Congress of January 18, 18 37, 4 Sharsw. Cont. of Story L. U. S. 2524, as follows: The director shall have the control and management of the mint, the superintendence of the officers and persons employed therein, and the general regulation and supervision of the business of the several branches. And in the month of January of every year he shall make report to the president of the United States of the operation of the mint and its branches for the year preceding. And also to the secretary of the treasury, from time to time, as said secretary shall require, setting forth all the operations of the mint subsequent to the last report made upon the subject.

2. The director is required to appoint, with the approbation of the president, assistants to the assayer, melter and refiner, chief coiner and engraver, and clerks to the director and treasurer, whenever, on representation made by the director to the president, it shall be the opinion of the president that such assistants or clerks are necessary. And bonds may be required from such assistants and clerks in such sums as the director shall determine, with the approbation of the secretary of the treasury. The salary of the director of the mint, for his services, including travelling expenses incurred in visiting the different branches, and all other charges whatever, is three thousand five hundred dollars.

DIRECTORS. Persons appointed or elected according to law, authorized to manage and direct the affairs of a corporation or company. The whole of the directors collectively form, the board of directors.

2. They are generally invested with certain powers by the acts of the legislature, to which they owe their existence.

3. In modern corporations, created by statutes, it is generally contemplated by the charter, that the business of the corporation shall be transacted exclusively by the directors. 2 Caines' R. 381. And the acts of such a board, evidenced by a legal vote, are as completely binding upon the corporation, and as complete authority to their agents, as the most solemn acts done under the corporate seal. 8 Wheat. R. 357, 8.

4. To make a legal board of directors, they must meet at a time when, and a place where, every other director has

the opportunity of attending to consult and be consuited with; and there must be a sufficient number present to constitute a quorum. 3 L. R. 574; 13 L. R. 527; 6 L. R. 759. See 11 Mass. 288; 5 Litt. R. 45; 12 S. & R. 256; 1 Pet. S. C. R. 46. Vide Dane's Ab. h. t.

5. Directors of a corporation are trustees, and as such are required to use due diligence and attention to its concerns, and are bound to a faithful discharge of the duty which the situation imposes. They are liable to the stockhoders whenever there has been gross negligence or fraud; but not for unintentional errors. 1 Edw. Ch. R. 513; 8 N. S. 80; 3. L. R. 576. See 4 Mann. & Gr. 552.

DIRECTORY. That which points out a thing or course of proceeding; for example, a directory law.

DIRIMANT IMPEDIMENTS, canon law. Those bars to a marriage, which, if consummated, render it null. They differ from prohibitive impediments. (q. v.)

DISABILITY. The want of legal capacity to do a thing.

2. Persons may be under disability, 1. To make contracts. 2. To bring actions.

3. − 1. Those who want understanding; as idiots, lunatics, drunkards, and infants or freedom to exercise their will, as married women, and persons in duress; or who, in consequence of their situation, are forbidden by the policy of the law to enter into contracts, as trustees, executors, administrators, or guardians, are under disabilities to make contracts. See Pa7−ties; Contracts.

4. − 2. The disabilities to sue are, 1. Alienage, when the alien is an enemy. Bac. Ab. Abatement, B 3; Id. Alien, E: Com. Dig. Abatement , K; Co. Litt. 129. 2. Coverture; unless as co−plaintiff with her hushand, a married woman cannot sue. 3. Infancy; unless he appears by guardian or prochein ami. Co. Litt. 135, b; 2 Saund. 117, f, n. 1 Bac. Ab. Infancy, K 2 Conn. 357; 7 John. 373; Gould, Pl. c. 5, _54. 4. That no such person as that named has any existence, is not, or never was, in rerum natura. Com. Dig. Abatement, E 16, 17; 1 Chit. Pl. 435; Gould on Pl. c. 5, _58; Lawes' Pl. 104; 19 John. 308. By the law of England there are other disabilities; these are, 1. Outlawry. 2. Attainder. 3. Praemunire. 4. Popish recusancy. 5. Monachism.

5. In the acts of limitation it is provided that persons lying under certain disabilities, such as being non compos, an infant, in prison, or under coverture, shall have the right to bring actions after the disability shall have been removed.

6. In the construction of this saving in the acts, it has been decided that two disabilities shall not be joined when they occur in different persons; as, if a right of entry accrue to a feme covert, and during the coverture she die, and the right descends to her infant son. But the rule is otherwise when there are several disabilities in the same person; as, if the right accrues to an infant, and before he has attained his full age, he becomes non compos mentis; in this case he may establish his right after the removal of the last disability. 2 Prest. Abs. of Tit. 341 Shep. To. 31; 3 Tho. Co. Litt. pl. 18, note L; 2 H. Bl. 584; 5 Whart. R. 377. Vide Incapacity.

DISAFFIRMANCE. The act by which a person who has entered into a voidable contract; as, for example, an infant, does disagree to such contract, and declares he will not abide by it.

2. Disaffirmance is express or implied. The former, when the declaration is made in terms that the party will not abide by the contract. The latter, when he does an act which plainly manifests his determination not to abide by it; as, where an infant made a deed for his land, and, on coming of age, be made a deed for the same land to another. 2 Dev. & Bat. 320; 10 Pet. 58; 13 Mass. 371, 375.

TO DISAVOW. To deny the authority by which an agent pretends to have acted as when he has exceeded the bounds of his authority.

2. It is the duty of the principal to fulfil the contracts which have been entered into by his authorized agent; and when an agent has exceeded his authority, he ought promptly to disavow such act, so that the other party may have his remedy against the agent. See Agent; Principal.

DIshURSEMENT. Literally, to take money out of a purse. Figuratively, to pay out money; to expend mouey; and some− times it signifies to advance money.

2. A master of a ship makes dishursements, whether with his own money or that of the owner, when he defrays expenses for the ship.

3. An executor, guardian, trustee, or other accountant, is said to have made dishursements when he expended money on account of the estate which he holds. These, when properly made, are always allowed in the settlement of the accounts.

DISCHARGE, practice. The act by which a person in confinement, under some legal process, or held on an accusation of some crime or misdemeauor, is set at liberty; the writing containing the order for his being so set at

liberty, is also called a discharge.

2. The discharge of a defendant, in prison under a ca. sa., when made by the plaintiff, has the operation of satisfying the debt, the plaintiff having no other remedy. 4 T. R. 526. But when the discharge is in consequence of the insolvent laws, or the defendant dies in prison, the debt is not satisfied. In the first place the plaintiff has a remedy against the property of the defendant, acquired after his discharge, and, in the last case, against the executors or administrators of the debtor. Bac. Ab. Execution, D; Bingh. on Execution, 266.

DISCHARGE OF A CONTRACT. The act of making a contract or agreement null.

2. Contracts may be discharged by, 1. Payment. 2. Accord and satisfaction. 8 Com. Dig. 917; 1 Nels. Abr. 18; 1 Lilly's Reg. 10, 16; Hall's Dig. 7 1 Poth. Ob. 345. 3. Release. 8 Com. Dig. 906; 3 Nels. Ab. 69; 18 Vin. Ab. 294; 1 Vin. Abr. 192; 2 Saund. 48, a; Gow. on Partn. 225, 230; 15 Serg. & Rawle, 441; 1 Poth Ob. 897. 4. Set off. 8 Vin. Ab. 556, Discount; Hall's Dig. 226, 496; 7 Com. Dig. 335, Pleader, 2 G 17; 1 Poth. Ob. 408. 5. The rescission of the contracts. 1 Com. Dig. 289, note x; 8 Com. Dig. 349; Chit. on Contr. 276. 6. Extinguishment. 7 Vin: Abr. 367; 14 Serg. & Rawle, 209, 290; 8 Com. Dig. 394; 2 Nels. Abr. 818; 18 Vin. Abr. 493 to 515; 11 Vin. Abr. 461. 7. Confusion, where the duty to pay and the right to receive unite in the same person. 8 Serg. & Rawle, 24−30 1 Poth. 425. 8. Extinction, or the loss of the subject matter of the contract. Bac. Abr. 48 8 Com. Dig. *349; 1 Poth. Ob. 429. 9. Defeasance. 2 Saund. 47, n. note 1. 10. The inability of one of the parties to fulfil his part. Hall's Dig. 40. 11. The death of the contractor, as where he undertook to teach an apprentice. 12. Bankruptcy. 13. By the act of limitations. 14. By lapse of time. Angell on Adv. Enjoym. passim; 15 Vin. Abr. 52, 99; 2 Saund. 63, n. b; Id. 66, n. 8; Id. 67, n. 10; Gow on Partn. 235; 1, Poth. 443, 449. 15. By neglecting to give notice to the, person charged. Chit. on Bills, 245. 16. By releasing one of two partners. See Receipt. 17. By neglecting to sue the principal at the request of the surety, the latter is discharged. 8 Serg. & Rawle, 110. 18. By the discharge of a defendant, who has been arrested under a capias ad satisfaciendum. 8 Cowen, R. 171. 19. By a certificate and discharge under the bankrupt laws. Act of Congress of August, 1841.

DISCHARGE OF A JURY, practice. The dismissal of a jury who had been charged with the trial of a cause.

2. Questions frequently arise, whether if the court discharge a jury before they render a verdict, in a criminal case, the prisoner can again be tried. In cases affecting life or members, the general rule is that when a jury have been sworn and charged, they cannot be discharged by the court, or any other, but ought to give a verdict. But to this rule there are many exceptions; for example, when the jury are discharged at the request or with the consent of the prisoner and for his benefit, when ill practices have been used; when the prisoner becomes insane, or becomes suddenly ill, so that he cannot defend himself, or instruct others in his defence; when a juror or witness is taken suddenly ill; when a juror has absented himself, or, on account of his intoxication, is incapable to perform his duties as a juror. These and many similar cases, which may be readily imagined, render the discharge of the jury a matter of necessity, and; under such very extraordinary and striking circumstances, it is impossible to proceed with the trial, with justice to the prisoner or to the state.

3. The exception to the rule, then, is grounded on necessity, and not merely because the jury cannot agree. 6 Serg. & Rawle, 577; 3 Rawle's Rep. 501. In all these cases the court must exercise a just discretion in deciding what is and what is not a case of necessity. This is the law as to the exceptions in Pennsylvania. In other states, and some of the courts of the United States, it has been ruled that the authority of the court to discharge the jury rests in the sound discretion of the court. 4 Wash. C. C. R. 409; 18 Johns. 187; 2 Johns. Cas. 301; 2 Gall. 364; 9 Mass. 494; 1 Johns. Rep. 66; 2 Johns. Cas. 275 2 Gallis. 364; 13 Wend. 55; Mart. & Yerg. 278; 3 Rawle, 498; 2 Dev. & Bat. 162; 6 S. & R. 577; 2 Misso. 166; 9 Leigh, 613; 10 Yerg. 535; 3 Humph. 70. Vide 4 Taunt. 309.

4. A distinction has been made between capital cases and other criminal cases, not capital. In cases of misdemeanors and in civil cases, the right to discharge rests in the sound discretion of the court, which is to be exercised with great caution. 9 Mass. 494; 3 Dev. & Batt. 115. In Pennsylvania this point seems not to be settled. 6 Serg. & Rawle, 599. The reader is referred to the word Jeopardy, and Story on the Const. _1781; 9 Wheat. R. 579; Rawle on the Const. 132, 133; 1 Chit. Cr. Law, 629; 1 Dev. 491; 4 Ala. R. 173; 2 McLean, 114. See Afforce.

DISCHARGED. Released, or liberated from custody. It is not equivalent to acquitted in a declaration for a malicious prosecution. 2 Yeates, 475 2 Term Rep. 231; 1 Strange, 114; Doug. 205 3 Leon. 100.

DISCLAIMER. This word signifies. to abandon, to renounce; also the act by which the renunciation is made. For example, a disclaimer is the act by which a patentee renounces a part of his title of invention,

2. In real actions, a disclaimer of the tenancy or title is frequently added to the plea of non tenure. Litt. _391. If

the action be one in which the demandant cannot recover damages, as formedon in the discender, the demandant or plaintiff was bound to pray judgment, &c., and enter, for thereby, he has the effect of his suit, et frustra fit per plura quod fieri potest per pauciora. But, if the demandant can recover damages and is unwilling to waive them, he should answer the disclaimer by averring that the defendant is tenant of the land, or claims to be such as the writ supposes, and proceed to try the question, otherwise he would lose his damages. The same course may be pursued in the action of ejectment, although in Pennsylvania, the formality of such a replication to the disclaimer is dispensed with, and the fact is tried without it. 5 Watts, 70; 3 Barr, 367. Yet, if the plaintiff is willing to waive his claim for damages, there is no reason why he may not ask for judgment upon the disclaimer without trial, for thereby he has the effect of his suit. Et frustra fit per plura, &c.

DISCLAIMER, chancery pleading. The renunciation of the defendant to all claims to the subject of the demand made by the plaintiff's bill.

2. A disclaimer is distinct in substance from an answer, though sometimes confounded with it, but it seldom can be put in without an answer for if the defendant has been made a party by mistake, having had an interest which be has parted with, the plaintiff may require an answer sufficient to ascertain whether that is the fact or not. Mitf. Pl. 11, 14, 253; Coop. Eq. Pl. 309; Story, Eq. Pl. c. 17, _838 to 844; 4 Bouv. Inst. n. 4211−14.

DISCLAIMER, estates. The act of a party by which be refuses to accept of an estate which has been conveyed to him. Vide Assent; Dissent.

2. It is said, that a disclaimer of a freehold estate must be in a court of record, because a freehold shall not be divested by bare words, in pais. Cruise, Dig. tit. 32, c. 2 6, s. 1, 2.

3. A disclaimer of tenancy is the act of a person in possession, who denies holding the estate from the person claiming to be the owner of it. 2 Nev. & M. 672. Vide 8 Vin.. Ab. 501; Coote, L. & T. 348, 375; F. N. B. 179 k; Bull. N. P. 96; 16 East, R. 99; 1 Man. & Gran. 135; S. C. 39 Eng. C. L. Rep. 380, 385; 10 B. & Cr. 816; ow, N. P. Cas. 180; 2 Nov. & Man. 673; 1 C. M. & R. 398 Co. Litt. 102, a.

DISCONTINUANCE, pleading. A chasm or interruption in the pleading.

2. It is a rule, that every pleading, must be an answer to the whole of what is adversly alleged. Com. Dig. Pleader, E 1, ri 4; 1 Saund. 28, n. 3; 4 Rep. 62, a. If, therefore, in an action of trespass for breaking a close, and cutting three hundred trees, the defendant pleads as to cutting all but two hundred trees, some matter of justifica− tion or title, and as to the two hundred trees says nothing, the plaintiff is entitled to sign judgment, as by nil dicit against him, in respect of the two hundred trees, and to demur, or reply to the plea, as to the remainder of the trespasses. On the other hand, if he demurs or replies to the plea, without signing, judgment for the part not answered, the whole action is said to be discontinued. For the plea, if taken by the plaintiff as an answer to the, whole action, it being, in fact, a partial answer only, is, in contemplation of law, a mere nullity, and a discontinuance takes place. And such discontinuance will amount to error on the record; such error is cured, however, after verdict, by the statute of Jeo fails, 32 H. VIII. c. 80; and after judgment by nil dicit, confession, or non sum informatus, by stat. 4 Ann. c. 16. It is to be observed, that as to the plaintiff's course of proceeding, there is a distinction between a case like this, where the defendant does not profess to answer the whole, and a case where, by the commencement of his plea, he professes to do so, but, in fact, gives a defective and partial answer, applying to part only. The latter case amounts merely to insufficient pleading, and the plaintiff's course, therefore, is not to sign judgment for the part defectively answered, but to demur to the whole plea. 1 Saund. 28, n.

3. It is to be observed, also, that where the part of pleading to which no answer is given, is immaterial, or such as requires no separate or specific answer for example, if it be mere matter of allegation, the rule does not in that case apply. Id. See Com. Dig. Pleader, W; Bac. Abr. Pleas, P.

DISCONTINUANCE, estates. An alienation made or suffered by the tenant in tail, or other tenant seised in autre droit, by which the issue in, tail, or heir or successor, or those in reversion or remainder, are driven to their action, and cannot enter.

2. The term discontinuance is used to distinguish those cases where the party whose freehold is ousted, can restore it only by action, from those in which he ma restore it by entry. Co. Litt. 325 a 3 Bl. Com. 171; Ad. Ej. 35 to 41; Com. Dig. h. t.; Bac. Ab. h. t.; Vin. Ab. h. t.; Cruise's Dig. Index, b.. t..5 2 Saund. Index, h. t.

DISCONTINUANCE, practice. This takes place when a plaintiff leaves a chasm in the proceedings of his cause, as by not continuing the process regularly from day to day, and time to time, as he ought. 3 Bl. Com. 296. See Continuance. A discontinuance, also, is an entry upon the record that the plaintiff discontinues his action.

2. The plaintiff cannot discontinue his action after a demurrer joined and entered, or after a verdict or a writ of

inquiry without leave of court. Cro. Jac. 35 1, Lilly's Abr. 473; 6 Watts & Serg. 1417. The plaintiff is, on discontinuance, generally liable for costs. But in some cases, he is not so liable. See 3 Johns. R. 249; 1 Caines' R. 116; 1 Johns. R. 143; 6 Johns. R. 333; 18 Johns. R. 252; 2 Caines' Rep. 380; Com. Dig. Pleader, W 5; Bac. Abr. Pleas' P.

DISCOUNT, practice. A set off, or defalcation in an action. Vin. Ab. h. t. DISCOUNT, contracts. An allowance made upon prompt payment in the purchase of goods; it is also the interest allowed in advancing money upon bills of exchange, or other negotiable securities due at a future time And to discount, signifies the act of buying a bill of exchange, or promissory note for a less sum than that which upon its face, is payable.

2. Among merchants, the term used when a bill of exchange is transferred, is, that the bill is sold, and not that it is discounted. See Poth. De l'Usure, n. 128 3 Pet. R. 40.

DISCOVERT. Not covert, unmarried. The term is applied to a woman unmarried, or widow; one not within the bonds of matrimony.

DISCOVERY, intern. law. The act of finding an unknown country.

2. The nations of Europe adopted the principle, that the discovery of any part of America gave title to the government by whose subjects, or by whose authority it was made, against all European governments. This title was to be consummated by possession. 8 Wheat. 543.

DISCOVERY, practice, pleading. The act of disclosing or revealing by a defendant, in his answer to a bill filed against him in a court of equity. Vide Bill of Discovery; 8 Vin. Ab. 537; 8 Com. Dig: 515.

DISCOVERY; rights. The patent laws of the United States use this word as synonymous with invention or improvement of July 4, 1836, s. 6.

TO DISCREDIT, practice, evidence. To deprive one of credit or confidence.

2. In general, a party may discredit a witness called by the opposite party, who testifies against him, by proving that his character is such as not to entitle him to credit or confidence, or any other fact which shows he is not, entitled to belief. It is clearly settled, also, that the party voluntarily calling a witness, cannot afterwards impeach his character for truth and veracity. 1 Moo. & Rob. 414; 3 B. & Cress. 746; S. C. 10 Eng. Com. Law R. 220. But if a party calls a witness, who turns out unfavorable, he may call another to prove the same point. 2 Campb. R. 556 2 Stark. R. 334; S. C. 3 E. C. L. R. 371 1 Nev & Man. 34; 4 B. & Adolph. 193; S. C. 24 E. C. L. R. 47; 1 Phil. Ev. 229; Rosc. Civ. Ev. 96.

DISCREPANCY. A difference between one thing and another, between one writing and another; a variance. (q. v.)

2. Discrepancies are material and immaterial. A discrepancy is immaterial when there is such a difference between a thing alleged, and a thing offered in evidence, as to show they are not substantially the same; as, when the plaintiff in his declaration for a malicious arrest averred, that "the plaintiff, in that action, did not prosecute his said suit, but therein made default," and the record was, that he obtained a rule to discontinue. 4 M. & M. 2 5 3. An immaterial discrepancy is one which does not materially affect the cause as, where a declaration stated that a deed bore date in a certain year of our Lord, and the deed was simply dated " March 30, 1701." 2 Salk. 658; 19 John. 49 5 Taunt. 707; 2 B. & A. 301; 8 Miss. R. 428; 2 M'Lean, 69; 1 Metc. 59; 21 Pick. 486.

DISCRETION, practice. When it is said that something is left to the discretion of a judge, it signifies that he ought to decide according to the rules of equity, and the nature of circumstances. Louis. Code, art. 3522, No. 13; 2 Inst. 50, 298; 4 Serg. & Rawle, 265; 3 Burr. 2539.

2. The discretion of a judge is said to be the law of tyrants; it is always unkown; it is different in different men; it is casual, and depends upon constitution, temper, and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly, and passion, to which human nature is liable. Optima lex quae minimum relinquit arbitrio judicis: optimus judex qui minimum sibi. Bac. Aph; 1 Day's Cas.. 80, ii.; 1 Pow. Mortg. 247, a; 2 Supp. to Ves. Jr. 391; Toull. liv. 3, n. 338; 1 Lill. Ab. 447.

3. There is a species of discretion which is authorized by express law, and, without which, justice cannot be administered; for example, an old offender, a man of much intelligence and cunning, whose talents render him dangerous to the community, induces a young man of weak intellect to commit a larceny in company with himself; they are both liable to be punished for the offence. The law, foreseeing such a case, has provided that the punishment should be proportioned, so as to do justice, and it has left such apportionment to the discretion of the judge. It is evident that, without such discretion, justice could not be administered, for one of these parties assuredly deserves a much more severe punishment than the other.

DISCRETION, crim. law. The ability to know and distinguish between good and evil; between what is lawful and what is unlawful.

2. The age at which children are said to have discretion, is not very accurately ascertained. Under seven years, it seems that no circumstances of mischievous discretion can be admitted to overthrow the strong presumption of innocence, which is raised by an age so tender. 1 Hale, P. C. 27, 8; 4 Bl. Coin. 23. Between the ages of seven and fourteen, the infant is, prima facie, destitute of criminal design, but this presumption diminishes as the age increases, and even during this interval of youth, may be repelled by positive evidence of vicious intention; for tenderness of years will not excuse a maturity in crime, the maxim in these cases being, malitia supplet aetatem. At fourteen, children are said to have acquired legal discretion. 1 Hale, P. C. 25.

DISCRETIONARY TRUSTS. Those which cannot be duly administered without the application of a certain degree of prudence and judgment; as when a fund is given to trustees to be distributed in certain charities to be selected by the trustees.

DISCUSSION, civil law. A proceeding, on the part of a surety, by which. the property of the principal debtor is made liable before resort can be had to the sureties; this is called the benefit of discussion. This is the law in Louisiana. Civ. Code of Lo. art. 3014 to 3020. See Domat, 3, 4, 1 to 4; Burge on Sur. 329, 343, 348; 5 Toull. p. 544 7 Toull. p. 93; 2 Bouv. Inst. n. 1414.

DISFRANCHISEMENT. The act of depriving a member of a corporation of his right as such, by expulsion. 1 Bouv. Inst. n. 192.

2. It differs from amotion, (q. v.) which is applicable to the removal of an officer from office, leaving him his rights as a member. Willc. on Corp. n. 708; Ang. & Ames on Corp. 237; and see Expulsion.

DISGRACE. Ignominy, shame, dishonor. No witness is required to disgrace himself. 13 How. St. Tr. 17, 334; 16 How. St. Tr. 161. Vide Crimination; To Degrade.

DISHERISON. Disinheritance; depriving one of an inheritance. Obsolete. Vide Disinherison.

DISHERITOR. One who disinherits, or puts another out of his freehold. Obsolete.

TO DISHONOR, contr. This term is applied to the nonfulfilment of commercial engagements. To dishonor a bill of exchange, or a promissory note, is to refuse or neglect to pay it at maturity.

2. The holder is bound to give notice to the parties to such instrument of its dishonor, and his laches will discharge the indorsers. Chit. on Bills, 394, 395, 256 to 278.

DISINHERISON, civil law. The act of depriving a forced heir of the inheritance which the law gives him.

2. In Louisiana, forced heirs may be deprived of their legitime, or legal portion, and of the seisin granted them by law, for just cause. The disinherison must be made in proper form, by name and expressly, and for a just cause, otherwise it is null.

3. The just causes for which parents may disinherit their children, are ten in number. 1. If the child has raised his or her hand to strike the parent, or if he or she has actually struck the parent; but a mere threat is not sufficient. 2. If the child has been guilty, towards a parent, of cruelty, of a crime, or grievous injury. 3. If the child has attempted to take away the life of either parent. 4. If the child has accused either parent of any capital crime, except, however, that of high treason. 5. If the child has refused sustenance to a parent, having the means to afford it. 6. If the child has neglected to take care of a parent, become insane. 7. If a child has refused to ransom them when detained in captivity. 8. If the child used any act of violence or coercion to hinder a parent from making a will. 9. If the child has refused to become security for a parent, having the means, in order to take him out of prison. 10. If the son. or daughter, being a minor, marries without the consent of his or her parents. Civil Code, art. 1609−1613.

4. The ascendants may disinherit their Iegitimate decendants, coming to their succession for the first nine causes above expressed, when the, acts of ingratitude, there mentioned, have been committed towards them, instead of towards their parents; but they cannot disinherit their descendants for the last cause. Art. 1614.

5. Legitimate children, dying without issue, and leaving a parent,. cannot disinherit him or her, unless for the seven following causes, to wit: 1. If the parent has accused the child of a capital crime, except, however, the crime of high treason. 2. If the parent has attempted to take the child's life. 3. If the parent has, by any violence or force, hindered the child from making a will. 4. If the parent has refused sustenance to the child in necessity, having the means of affording it. 5. If the parent has neglected to take care of the child when in a state of insanity. 6. If the parent has neglected to ransom the child when in captivity. 7. If the father or mother have attempted the life the one of the other, in which case the child or descendant, making a will, may disinherit the one who has attempted

the life of the other. Art. 1615.

6. The testator must express in the will for what reason he disinherited his forced heirs, or any of them, and the other heirs of the testator are moreover obliged to prove the facts on which the disinherison is founded, otherwise it is null. Art. 1616. Vide Nov 115 Ayl. Pand. B. 2, t. 29; Swinb. art 7, 22.

DISINHERITANCE. The act by which a person deprives his heir of an inheritance, who, without such act, would inherit.

2. By the common law, any one may give his estate to a stranger, and thereby disinherit his heir apparent. Coop. Justin. 495. 7 East, Rep. 106.

DISINTERESTED WITNESS. One who has no interest in the cause or matter in is−sue, and who is lawfully competent to testify.

2. In North Carolina and Tennessee, wills to pass lands must be attested by disinterested witnesses. See Attesting Witness; Competent Witness; Credible Witness; Respectable Witness, and Witness.

DISJUNCTIVE TERM. One which is placed between two contraries, by the affirming of one of which, the other is taken away: it is usually expressed by the word or. Vide 3 Ves. 450; 7 Ves. 454; 2 Rop. Leg. 290.; 1 P. Wms. 433; 2 Cox, Rep. 213; 2 P. Wms. 283 2 Atk. 643; 6 Ves. 341; 2 Ves. sr. 67; 2 Str. 1175; Cro. Eliz. 525; Pollexf. 645; 1 Bing. 500; 3 T. R. 470; 1 Ves. sr. 409; 3 Atk. 83, 85; Ayl. Pand. 56; 2 Miles, Rep. 49.

2. In the civil law, when a legacy is given to Caius or Titius, the word or is considered and, and both Caius and Titius are entitled to the legacy in equal parts. 6 Toull. n. 704. See Copulative term; Construction, subdivision, And; Or.. Also, Bac. Ab. Conditions, P 5.

DISMES. Another name for tithes. Dime, (q. v.) a piece of federal money, is sometimes improperly written disme.

TO DISMISS A CAUSE, practice. A term used in courts of chancery for removing a cause out of court without any further hearing.

DISOBEDIENCE. The want of submission to the orders of a superior.

2. In the army, disobedience is a misdemeanor.

3. For disobedience to parents, children may be punished; and apprentices may be imprisoned for disobedience to the lawful commands of their master. Vide Correction.

DISORDERLY HOUSE, crim. law. A house, the inmates of which believe so badly as to become a nuisance to the neighborhood.

2. The keeper of such house may be indicted for keeping a public nuisance. Hardr. 344; Hawk. b. 1, c. 78, s. 1 and 2 Bac. Ab. Inns, A; 1 Russ. on Cr. 298; 1 Wheel. C. C. 290; 1 Serg. & Rawle, 342; 2 Serg. & Rawle, 298; Bac. Ab. Nuisances, A; 4 Chit. BI.. Com. 167, 8, note. The hushand must be joined with the wife in an indictment to suppress a disorderly house. Justice’s Case, Law 16; 1 Shaw, 146. Vide Bawdy house; Ill fame.

DISPARAGEMENT. An injury by union or comparison with some person or thing of inferior rank or excellence; as, while the infant was in ward, by the English law, the guardian had the power of tendering him a suitable match without disparagement. 2 Bl. Com. 70.

TO DISPAUPER, Eng. law. To deprive a person of the privilege of suing in forma pauperis. (q. v.)

2. When a person has been admitted to sue in forma pauperis, and, before the suit is ended, it appears that the party. has become the owner of a sufficient estate real or personal, or has been guilty of some wrong, he may be dispaupered.

DISPENSATION. A relaxation of law for the benefit or advantage of an individual. In the United States, no power exists, except in the legislature, to dispense with law, and then it is not so much a dispensation as a change of the law.

TO DISPONE, Scotch law. This is a technical word, which implies, it is said, a transfer of feudal property by a particular deed, and is not equivalent to the term alienate; but Lord Eldon says, "with respect to the word dispone, if I collect the opinions of a majority of the judgcs rightly, I am of opinion that the word dispone would have the same effect as the word alienate.) (q. v.) Sandford on Entails, 179, note.

DISPOSITION, French law. This word has several accept−ations; sometimes it signifies the effective marks of the will of some person; and at others the instrument containing those marks.

2. The dispositions of man make the dispositions of the law to cease; for example, when a man bequeaths his estate, the disposition he makes of it, renders the legal disposition of it, if he had died intestate, to cease.

DISSEISED pleading. This is a word with a technical meaning, which, when inserted in an indictment for

forcible entry and detainer, has all the force of the words expelled or unlawfully, for the last is superfluous, and the first is implied in the word disseised. 8 T. R. 357; Cro. Jac. 32; vide 3 Yeates' R. 39; S. C. 4 Dall. Rep. 212.

DISSEISEE, torts. One who is wrongfully put out of possession of his lands.

DISSEISIN, torts. The privation of seisin. It takes the seisin or estate from one man and places it in another. It is an ouster of the rightful owner from the seisin or estate in the land, and the coinmencement of a new estate in the wrong doer. It may be by abatement, intrusion, discontinuance, or deforcement, as well as by disseisin, properly so called. Every dispossession is not a disseisin. A disseisin, properly so called, requires an ouster of the freehold. A disseisin at election is not a disseisin in fact; 2 Prest. Abs. tit. 279, et seq.; but by admission only of the injured party, for the purpose of trying his right in a real action. Co. Litt. 277; 3 Greenl. 316; 4 N. H. Rep. 371; 5 Cowen, 371; 6 John. 197; 2 Fairf. 309, 2 Greenl. 242; 5 Pet. 402; 6 Pick. 172.

2. Disseisin may be effected either in corporeal inheritances, or incorporeal. Disseisin of things corporcal, as of houses, lands, &c., must be by entry and actual dispossession of the freehold; as if a man enters, by force or fraud, into the house of another, and turns, or at least, keeps him or his servants out of possession. Disseisin of incorporeal hereditaments cannot be an actual dispossession, for the subject itself is neither capable of actual bodily possession nor dispossession. 3 B1. Com. 169, 170. See 15 Mass. 495 6 John. R. 197; 2 Watts, 23; 6 Pick. 172 1 Verm. 155; 11 Pet. R. 41; 10 Pet. R. 414; 14 Pick. 374; 1 Dana's R. 279; 2 Fairf. 408; 11 Pick. 193; 8 Pick. 172; 8 Vin. Ab. 79; 1 Swift's Dig. 504; 1 Cruise, *65; Arch. Civ. Pl. 12; Bac. Ab. h. t.; 2 Supp. to Ves. Jr. 343; Dane's Ab. Index, h. t.; 1 Chit. Pr. 374, note (r.)

DISSEISOR, torts. One who puts another out of the possession of his lands wrongfully.

DISSENT, contracts. A disagreement to something which has been done. It is express or implied.

2. The law presumes that every person to whom a conveyance has been made has given his assent to it, because it is supposed to be for his benefit. To rebut the presumption, his dissent must be expressed. Vide 4 Mason, R. 206; 11 Wheat. R. 78; 1 Binn. R. 502; 2 Binn. R. 174; 6 Binn. R. 338; 12 Mass. R. 456; 17 Mass. R. 552; 3 John. Ch. R. 261; 4 John. Ch. R. 136, 529; and dssent, and the authorities there cited.

DISSOLUTION, contracts. The dissolution of a contract, is the annulling its effects between the contracting parties.

2. This dissolution of a partnership, is the putting an end to the partnership. Its dissolution does not affect contracts made between the. partners and others; so that they are entitled to all their rights, and they are liable on their obligations, as if the partnership had not been dissolved. Vide article Partnership and 3 Kent, Com. 27 Dane's Ab. h. t.; Gow on Partn. Index, h. t.; Wats. on Partn. h. t.; Bouv. Inst. Index, h. t.

DISSOLUTION, practice. The act of rendering a legal proceeding null, or changing its character; as, a foreign attachment in Pennsylvania is: dissolved by entering bail to the action. Injunctions are dissolved by the court.

TO DISSUADE, crim. law. To induce a person not to do an act.

2. To dissuade a witness from giving evidence against a person indicted, is an indictable offence at common law. Hawk. B. 1, c. 2 1, s. 1 5. The mere attempt to stifle evidence, is also criminal, although the persuasion should not succeed, on the general principle that an incitement to commit a crime, is in itself criminal. 1 Russ. on Cr. 44; 6 East, R. 464; 2 East, R. 6, 21; 2 Str. 904; 2 Leach, 925. Vide To Persuade.

DISTRACTED PERSON, This term is used in the statutes of Illinois; Rev. Laws of Ill. 1833, p. 332; and New Hampshire; Dig. Laws of N. H. 1830, p. 339; to express a state of insanity.

TO DISTRAIN. To take an keep any personal chattel in custody, as a distress. (q. v.)

DISTRAINOR. One who makes a distress of goods and chattels to enforce some right.

DISTRESS, remedies. A distress is defined to be, the taking of a personal chattel, without legal process, from the possession of the wrong doer, into the hands of the party grieved, as a pledge for the redress of an injury, the performance of a duty, or the satisfaction of a demand. 3 Bl. Com. 6. It is a general rule, that a man who has an entire duty, shall not split the entire sum and distrain for part of it at one time, and part of it at another time. But if a man seizes for the whole sum that is due him, but mistakes the value of the goods distrained, there is no reason why he should not afterwards complete his execution by making a further seizure. 1 Burr. 589. It is to be observed also, that there is an essential difference between distresses at common law and distresses prescribed by statute. The former are taken nomine penae, (q. v.) as a means of compelling payment; the latter are similar to executions, and are taken as satisfaction for a duty. The former could not be sold the latter might be. Their only similarity is, that both are replevisable. A consequence of this difference is, that averia carucae are distrainable in the latter case, although there be other sufficient distress. 1 Burr. Rep. 588.

2. The remedy by distress to enforce the payment of arrears of rent is so frequently adopted by landlords, (Co. Lit. 162, b,) that a considerable space will be allotted to this article under the following heads: 1. The several kinds of rent for which a distress may be made. 2. The persons who may make it. 3. The goods which may be distrained. 4. The time when a distress may be made. 5. In what place it may be made. 6. The manner of making it, and disposing of the goods distrained. 7. When a distress will be a waiver of a forfeiture of the lease.

3. − _1. Of the rents for which a distress may be made. 1. A distress may generally be taken for any kind of rent in arrear, the detention of which, beyond the day of payment, is an injury to him who is entitled to receive it. 3 Bl. Com. 6. The rent must be reserved out of a corporeal hereditament, and must be certain in its quantity, extent, and time of payment, or at least be capable of being reduced to certainty. Co. Lit. 96, a.; 13 Serg. & Rawle, 64; 3 Penn. R. 30. An agreement that the lessee pay no rent, provided he make repairs, and the value of the repairs is uncertain, would not authorize the landlord to distrain. Addis. 347. Where the rent is a certain quantity of grain, the landlord may distrain for so many bushels in arrear, and name the value, in order that if the goods should not be replevied, or the arrears tendered, the officer may know what amount of money is to be raised by the sale, and in such case the tenant may tender the arrears in grain. 13 Serg. & Rawle, 52; See 3 Watts & S. 531. But where the tenant agreed, instead of rent, to render " one−half part of all the grain of every kind, and of all hemp, flax, potatoes, apples, fruit, and other produce of whatever kind that should be planted, raised, sown or produced, on or out of the demised premises, within and during the terms,", the landlord cannot, perhaps, distrain at all; he cannot, certainly, distrain for a sum of money, although he and the tenant may afterwards have settled their accounts, and agreed that the half of the produce of the land should be fixed in money, for which the tenant gave his note, which was not paid. 1 3 Serg. & Rawle, 5 2. But in another case it was held, that on a demise of a grist mill, when the lessee is to render one−third of the toll, the lessor may distrain for rent. 2 Rawle, 11.

4. − 2. With respect to the amount of the rent, for which a lessor may in different cases be entitled to make a distress, it may be laid down as a general rule, that whatever can properly be considered as a part of the rent, may be distrained for, whatever be the particular mode in which it is agreed to be paid. So that where a person entered into possession of certain premises, subject to the approbation of the landlord, which was afterwards obtained, by agreeing to pay in advance, rent from the time be came into possession, it was, in England, determined that the landlord might distrain for the whole sum accrued before and after the agreement. Cowp. 784. For on whatever day the tenant agrees that the rent shall be due, the law gives the landlord the power of distraining for it at that time. 2 T. R. 600. But see 13 S. & R. 60. In New York, it was determined, that an agreement that the rent should be paid in advance, is a personal covenant on which an action lies, but not distress. 1 Johns. R. 384. The supreme court of Pennsylvania declined deciding this point, as it was not necessarily before them. 13 Serg. & Rawle, 60. Interest due on rent cannot, in general, be distrained for; 2 Binn. 146; but may be recovered from the tenant by action, unless under particular circumstances. 6 Binn. 159.

5. − _2. Of the persons entitled to make a distress. 1. When the landlord is sole owner of the property out of which rent is payable to him, he may, of course, distrain in his own right.

6. − 2. Joint tenants have each of them an estate in every part of the rent; each may, therefore, distrain alone for the whole, 3 Salk. 207, although he must afterwards account with his companions for their respective shares of the rent. 3 Salk. 17; 4 Bing. 562; 2 Brod. & B. 465; 5 Moore, 297 Y. B. 15 H. VIII, 17, a; 1 Chit. Pr. 270; 1 Tho. Co. Litt. 783, note R; Bac. Ab. Account; 5 Taunt. 431; 2 Chit. R. 10; 3 Chit. Pl. 1297. But one joint tenant cannot avow solely, because the avowry is always upon the right, and the right of the rent is in all of them. Per Holt, 3 Salk. 207. They may all join in making the distress, which is the better way.

7. − 3. Tenants in common do not, like joint tenants, hold by one title and by one right, but by different titles, and have several estates. Therefore they should distrain separately, each for his share, Co. Lit. s. 317, unless the rent be of an entire thing, as to render a horse, in which case, the thing being incapable of division, they must join. Co. Lit. 197, a. Each tenant in common is entitled to receive, from the lessee, his proportion of the rent; and therefore, when a person holding under two tenants in common, paid the whole rent to one of them, after having received a notice to the contrary from the other, it was held, that the party who gave the notice might afterwards distrain. 5 T. R. 246. As tenants in common have no original privity of estate between them, as to their respective shares, one may lease his part of the land to the other, rendering rent, for which a distress may be made, as if the land had been demised to a stranger. Bro. Ab. tit. Distress, pl. 65.

8. − 4. It may be, perhaps, laid down asa general rule, that for rent due in right of the wife, the hushand may distrain alone; 2 Saund. 195; even if it accrue to her in the character of executrix or administratrix. Ld. Raym.

369. With respect to the remedies for the recovery of the arrears of a rent accruing in right of his wife, a distinction is made between rent due for land, in which the wife has a chattel interest, and rent due in land, in which she has an estate of freehold and inheritance. And in some cases, a further distinction must be made between a rent accruing before and rent accruing after the coverture. See, on this subject, Co. Lit. 46, b, 300, a; 351, a; 1 Roll. Abr. 350; stat; 32 Hen. VIII. c. 37, s. 3.

9. − 5. A tenant by the curtesy, has an estate of freehold in the lands of his wife, and in contemplation of law, a reversion on all land of the wife leased for years or lives, and may distrain at common law for all rents reserved thereon.

10. − 6. A woman may be endowed of rent as well as of land; if a hushand, therefore, tenant in fee, make a lease for years, reserving rent, and die, his widow shall be endowed of one−third part of the reversion by metes and bounds, together with a third part of the rent. Co. Litt. 32, a. The rent in this base is apportioned by the act of law, and therefore if a widow be endowed of a third part of a rent in fee, she may distrain for a third part thereof, and the heir shall distrain for the other part of the rent. Bro. Abr. tit. Avowry, pl. 139.

11. − 7. A tenant for his own life or that of another, has an estate of freehold, and if he make a lease for years, reserving rent, he is entitled to distrain upon the lessee. It may here be proper to remark, that at common law, if a tenant for life made a lease for years, if be should so long live, at a certain rent, payable quarterly, and died before the quarter day, the tenant was discharged of that quarter's rent by the act of God. 10 Rep. 128. But the 11 Geo. II. c. 19, s. 15, gives an action to the executors or administrators of such tenant for life.

12. − 8. By the statute 32 Henry VIII. c. 37, s. 1, "the personal representatives of tenants in fee, tail, or for life, of rent−service, rent−charge, and rents−seek, and fee farms, may distrain for, arrears upon the land charged with the payment, so long as the lands continue in seisin or possession of the tenant in demesne, who ought to have paid the rent or fee farm, or some person claiming under him by purchase, gift or descent." By the words of the statute, the distress must be made on the lands while in the possession of the "tenant in demesne," or some person claiming under him, by purchase, gift or descent; and therefore it extends to the possession of those persons only who claim under the tenant, and the statute does not comprise the tenant in dower or by the curtesy, for they come in, not under the party, but by act of law. 1 Leon. 302.

13. − 9. The heir entitled to the reversion may distrain for rent in arrear which becomes due after the ancestor's death; the rent does not become due till the last minute of the natural day, and if the ancestor die between sunset and midnight, the heir, and not the executor, shall have the rent. 1 Saund. 287. And if rent be payable at either of two periods, at the choice of the lessee, and the lessor die between them, the rent being unpaid, it will go to the heir. 10 Rep. 128, b.

14. − 10. Devisees, like heirs, may distrain in respect of their reversionary estate; for by a devise of the reversion the rent will pass with its incidents. 1 Ventr. 161.

15. − 11. Trustees who have vested in them legal estates, as trustees of a married woman, or assignees of an insolvent, may of course distrain in respect of their legal estates, in the same manner as if they were beneficially interested therein.

16. − 12. Guardians may make leases of their wards' lands in their, own names, which will be good during the minority of the ward. and, consequently, in respect of such leases, they possess the same power of distress as other persons granting leases in their own rights. Cro. Jac. 55, 98.

17. − 13. Corporations aggregate should generally make and accept leases or other conveyances of lands or rent, under their common seal. But if a lease be made by an agent of the corporation, not under their common seal, although it may be invalid as a lease, yet if the tenant hold under it, and pay rent to the bailiff or agent of the corporation, that is sufficient to constitute a tenancy at least from year to year, and to entitle the corporation to distrain for rent. New Rep. 247. But see Corporation.

18. − _3. Of the things which may or may not be distrained. Goods found upon the premises demised to a tenant are generally liable to be distrained by a landlord for rent, whether such goods in fact belong to the tenant or other persons. Coin. Dig. Distress, B 1. Thus it has been held, that a gentleman's chariot, which stood in a coach−house belonging to a common livery stable keeper, was distrainable by the landlord for the rent due him by the livery stable keeper for the coach−house. 3 Burr. 1498. So if cattle are put on the tenant's land by consent of the owners of the beasts, they are distrainable by the landlord immediately after for rent in arrear. 3 Bl. Com. 8. But goods are sometimes privileged from distress, either absolutely or conditionally.

19. First. Those of the first class are privileged, 1. In respect of the owner of 2. Because no one can have property

in them. 3. Because they cannot be restored to the owner in the same plight as when taken. 4. Because they are fixed to the freehold. 5. Because it is against the policy of law that they should be distrained. 6. Because they are in the custody of the law. 7. Because they are protected by some special act of the legislature.

20. − 1. The goods of a person who has some interest, in the land jointly with the distrainer, as those of a joint tenant, although found upon the land, cannot be distrained. The goods of executors and administrators, or of the assignee of an insolvent regularly discharged according to law, cannot, in Pennsylvania, be distrained for more than one year's rent. The goods of a former tenant, rightfully on the land, cannot be distrained for another's rent. For example, a tenant at will, if quitting upon notice from his landlord, is entitled to the emblements or growing crops; and therefore even after they are reaped, if they remain on the land for the purpose of hushandry, they cannot be distrained for rent due by the second tenant. Willes, 131. And they are equally protected in the hands of a vendee. Ibid. They cannot be distrained, although the purchaser allow them to remain uncut an unreasonable time after the are ripe. 2 B. & B. 862; 5 Moore, 97, S. C.

21. − 2. As every thing which is distrained is presumed to be the property of the tenant, it will follow that things wherein no man can have an absolute and valuable property, as cats, dogs, rabbits, and all animals ferae naturae, cannot be distrained. Yet, if deer, which are of a wild nature, are kept in a private enclosure, for the purpose of sale or profit, this so far changes their nature by reducing them to a kind of stock or merchandise, that they may be distrained for rent. 3 B1. Com. 7.

22. − 3. Such things as cannot be restored to the owner in the same plight as when they were taken, as milk, fruit, and the like, cannot be distrained. 3 Bl. Com. 9.

23.− 4. Things affixed or annexed to the freehold, as furnaces, windows, doors, and the like, cannot be distrained, because they are not personal chattels, but belong to the realty. Co. Litt. 47, b. And this rule extends. to such things as are essentially a part of the freehold, although for a time removed therefrom, as a millstone removed to be picked; for this is matter of necessity, and it still remains in contemplation of law, a part of the freehold. For the same reason an anvil fixed in a smith's shop cannot be distrained. Bro. Abr. Distress, pl. 23; 4 T. R. 567; Willis, Rep. 512 6 Price's R. 3; 2 Chitty's R. 167.

24. − 5. Goods are privileged in cases where the proprietor is either compelled, from necessity to place his goods upon the land, or where be does so for commercial purposes. 17 S. & R. 139; 7 W. & S. 302; 8 W. & S. 302; 4 Halst. 110; 1 Bay, 102, 170; 2 McCord, 39; 3 B. & B. 75; 6 J. B. Moore, 243; 1 Bing. 283; 8 J. B. Moore, 254; 2 C. & P. 353; 1 Cr. M. 380. In the first case, the goods are exempt, because the owner has no option; hence the goods of a traveller in an inn are exempt from distress. 7 H. 7, M. 1, p. 1.; Hamm. N. 380, a.; 2 Keny. 439; Barnes, 472; 1 Bl. R. 483; 3 Burr. 1408. In the other, the interests of the community require that commerce should be encouraged, and adventurers will not engage in speculations, if the property embarked is to be made liable for the payment of debts they never contracted. Hence goods landed at a wharf, or deposited in a warehouse on storage, cannot be distrained. 17 Serg. & Rawle, 138; 6 Whart. R. 9, 14; 9 Shepl. 47; 23 Wend. 462. Valuable things in the way of trade are not liable to distress; as, a horse standing in a smith's shop to be shod, or in a common inn; or cloth at a tailor's house to be made into a coat; or corn sent to a mill to be ground, for these are privileged and protected for the benefit of trade. 3 Bl. Com. 8. On the same principle it has been decided, that the goods of a boarder are not liable to be distrained for rent due by the keeper of a boarding house; 5 Whart. R. 9; unless used by the tenant with the boarder's consent, and without that of the landlord: 1 Hill , 565.

25. − 6. Goods taken in execution cannot be distrained. The law in some states gives the landlord the right to claim payment out of the proceeds of an execution for rent, not exceeding one year, and he is entitled to payment up to the day of seizure, though it be in the middle of a quarter 2 Yeates, 274; 5 Binn. 505; but he is not entitled to the day of sale. 5 Binn. 505. See 18 Johns. R. 1. The usual practice is, to give notice to the, sheriff that there is a certain sum due to the landlord as arrears of rent; which notice ought to be given to the sheriff, or person who takes the goods in execution upon the premises for the sheriff is, not bound to find out whether rent is due, nor is he liable to an action, unless there has been a demand of rent before the removal. 1 Str. 97, 214; 3 Taunt. 400 2 Wils. 140; Com. Dig. Rent, D 8; 11 Johns. R. 185. This notice can be given by the immediate landlord only a ground landlord is not entitled to his rent out of the goods of the under tenant taken in execution. 2 Str. 787. And where there are two executions, the landlord is not entitled to a year's rent on each. See Str. 1024. Goods distrained and replevied may be distrained by another landlord for subsequent rent. 2 Dall. 68.

26.−7. By some special acts of the legislature it is provided that tools of a man's trade, some designated household furniture, school books, and the like, shall be exempted from distress, execution, or sale. And by a

recent Act of Assembly of Pennsylvania, April 9, 1849, property to the value of three hundred dollars, exclusive of all wearing apparel of the defendant and his family, and all bibles and school books in use in the family, are exempted from levy and sale on execution, or by distress for rent.

27. − Secondly. Besides the above mentioned goods and chattels, which are absolutely privileged from distress, there are others which are conditionally so, but which may be distrained under certain circumstances. These are, 1. Beasts of the plough, which are exempt if there be a sufficient distress besides on the land whence the rent issues. Co. Litt. 47, a; Bac. Abr. Distress, B. 2. Implements of trade; as, a loom in actual use; and there is a sufficient distress besides. 4 T. R. 565. 3. Other things in actual use,; as, a horse whereon a person is riding, an axe in the hands of. a person cutting wood, and the like. Co. Litt. 4 7, a.

28. − _4. The time when a distress may be made. 1. The distress cannot be made till the rent is due by the terms of the lease; as reat is not due until the last minute of the natural day on which it is reserved, it follows that a distress for rent cannot be made on that day. 1 Saund. 287; Co. Litt. 47, b. n. 6. A previous demand is not generally necessary, although there be a clause in the lease, that the lessor may distrain for rent," being lawfully demanded Bradb. 124; Bac. Abr. Rent, 1; the making of the distress being a demand though it is advisable to make such a demand. But where a lease provides for a special demand; as, if the clause were that if the rent should happen to be behind it should be demanded at a particular place not on the land; or be demanded of the person of the tenant; then such special demand is necessary to support the distress. Plowd. 69 Bac. Abr. Rent, I.

29. − 2 A distress for rent can only be made during the day time. Co. Litt. 142, a.

30. − 3. At common law a distress could not be made after the expiration of the lease to remedy this evil the legislature of Pennsylvania passed an act making it "lawful for any person having any rent in arrear or due upon any lease for life or years or at will, ended or determined, to distrain for such arrears after the determination of the said respective leases, in the same manner as they might have done, if such lease had not been ended: provided, that such distress be made during the continuance of such lessor’s title or interest.", Act of March 21, 1772, s. 14, 1 Smith’s Laws of Penna. 375. 4. In the city and county of Philadelphia, the landlord may, under certain circumstances, apportion his rent, and distrain before it becomes due. See act of March 25, 1825, s. 1, Pamph. L. 114.

31. − _5. In what place a distress may be made. The distress may be made upon the land, or off the land. 1. Upon the land. A distress generally follows the rent, and is consequently confined to the land out of which it issues. If two pieces of land, therefore, are let by two separate demises, although both be contained in one lease, a joint distress cannot be made for them, for this would be to make the rent of one issue out of the other. Rep. Temp. Hardw. 245; S. C. Str. 1040. But where lands lying in different counties are let together by one demise, at one entire rent, and it does not appear that the lands are separate from each other, one distress may be made for the whole rent. Ld. Raym. 55; S. C. 12 Mod. 76. And, where rent is charged upon land, which is afterwards held by several tenants, the grantee or landlord may distrain for the whole upon the land of any of them; because the whole rent is deemed to issue out of every part of the land. Roll. Abr. 671. If there be a house on the land, the distress may be made in the house; if the outer door or window be open, a distress may be taken out of it. Roll. Abr. 671. And if an outer door be open, an inner door may be broken open for the purpose of taking a distress. Comb. 47; Cas. Temp. Hard. 168. Barges on a river, attached to the leased premises (a wharf) by ropes, cannot be distrained. 6 Bingh. 150; 19 Eng. Com. Law R. 36.

32. − 2. Off the land. By the 5th and 6th sections of the Pennsylvania act of assembly of March 21, 1772, copied from the 11 Geo. II. c. 19, it is enacted, that if any tenant for life, years, at will, or otherwise, shall fraudulently or clandestinely convey his goods off the premises to prevent the landlord from distraining the same, such person, or any person by him lawfully authorized, may, within thirty days after such conveyance, seize the same, wherever they shall be found, and dispose of them in such manner as if they had been distrained on the premises. Provided, that the landlord shall not distrain any goods which shall have been previously sold, bona fide, and for a valuable consideration, to one not privy to the fraud. To bring a case within the act, the removal must take place after the rent becomes due, and must be secret, not made in open day, for such removal cannot be said to be clandestine within the meaning of the act. 3 Esp. N. P. C. 15; 12 Serg. & Rawle, 217; 7 Bing. 422; 1 Moody & Malkin, 585. It has however been made a question, whether goods are protected that were fraudulently removed on the night before the rent had become due. 4 Camp. 135. The goods of a stranger cannot be pursued; they can be distrained only while they are, on the premises. 1 Dall. 440.

33. − _6. Of the manner of making a distress. 1. A distress for rent may be made either by the person to whom it

is due, or, which is the preferable mode, by a constable, or bailiff, or other officer properly authorized by him.

34. − 2. If the distress be made by a constable, it is necessary that he should be properly authorized to make it; for which purpose the landlord should give him a written authority, or; as it is usually called, a warrant of distress; but a subsequent assent and recognition given by the party for whose use the distress has been made, is sufficient. Hamm. N. P. 382.

35. − 3. When the constable is thus provided with the requisite authority to make a distress, he, may distrain by seizing the tenant's goods, or some of them in the name of the whole, and declaring that he takes them as a distress for the sum expressed in the warrant to be due by the tenant to the landlord, and that he takes them by virtue of the said warrant; which warrant he ought, if required, to show. 1 Leon. 50.

36. − 4. When making the distress it ought to be made for the whole rent; but if goods cannot be found at the time, sufficient to satisfy the rent, or the party mistake the value of the thing distrained, he may make a second distress. Bradb. 129, 30; 2 Tr. & H. Pr. 155; supra 1.

37. − 5. As soon as a distress is made, an inventory of the goods distrained should be made, and a copy of it delivered to the tenant, together with a notice of taking such distress, with the cause for taking the same. This notice of taking a distress is not required by the statute to be in writing; and, therefore, parol or verbal notice may be given either to the tenant on the premises, or to the owner of the goods distrained. 12 Mod. 76. And although notice is directed by the act to specify the cause of taking, it is not material whether it accurately state the period of the rent's becoming due; Dougl. 279; or even whether the true cause of taking the goods be expressed therein. 7 T. R. 654. If the notice be not personally given, it should be left in writing at the tenant's house, or according to the directions of the act, at the mansion−house or other most notorious place on the premises charged with the rent distrained for.

38. − 6. The distrainor may leave or impound the distress on the premises for the five days mentioned in the act, but becomes a trespasser after that time. 2 Dall. 69. As in many cases it is desirable for the sake of the tenant that the goods should not be sold as soon as the law permits, it is usual for him to sign an agreement or consent to their remaining on the premises for a longer time, in the custody of the distrainor, or of a person by him appointed for that purpose. While in his possession, the distrainor cannot use or work cattle distrained, unless it be for the owner's benefit, as to milk a cow, or the like. 5 Dane's Abr. 34.

39. − 7. Before the goods are sold they must be appraised by two reputable free−holders, who shall take an oath or affirmation to be administered by the sheriff, under−sheriff, or coroner, in the words mentioned in the act.

40. − 8. The next requisite is to give six days public notice of the time and place of sale of the things distrained; after which, if they have not been replevied, they may be sold by the proper officer, who may apply the proceeds to the payment and satisfaction of the rent, and the expenses of the distress, appraisement and sale. The over−plus, if any, is to be paid to the tenant.

41. − _7. When a distress will be a waiver of a forfeiture of the lease. On this subject, see 1 B. & Adol. 428. The right of distress, it seems, does not exist in the New England states. 4 Dane's Ab. 126; 7 Pick. R. 105; 3 Griff. Reg 404; 4 Griff. Reg. 1143; Aik. Dig. 357, nor in Alabama, Mississippi, North Carolina, nor Ohio; and in Kentucky, the right is limited to a distress for a pecuniary rent. 1 Hill. Ab. 156. Vide, generally, Bouv. Inst. Index, h . t.; Gilb. on Distr. by Hunt; Bradb. on Distr.; Com. Dig. h. t.; Bac. Ab. h. t.; Vin. Ab. h. t.; 2 Saund. Index, h. t.; Wilk. on Repl.; 3 Chit. Bl. Com. 6, note; Crabb on R. P. _222 to 250.

DISTRESS INFINITE, English practice. A process commanding the sheriff to distrain a person from time to time, and continually afterwards, by taking his goods by way of pledge, to enforce the performance of something due from the party distrained upon. In this case, no distress can be immoderate, because, whatever its value may be, it cannot be sold, but is to be immediately restored on satisfaction being made. 3 Bl. Com. 231. See Distringas.

DISTRIBUTION. By this term is understood the division of an intestate's estate according to law.

2. The English statute of 22 and 23 Car. II. c. 10, which was itself probably borrowed from the 118th Novel of Justinian, is the foundation of, perhaps, most acts of distribution in the several states. Vide 2 Kent, Com. 342, note; 8 Com. Dig. 522; 11 Vin. Ab. 189, 202; Com. Dig. Administration, H.

DISTRIBUTIVE JUSTICE. That virtue, whose object it is to distribute rewards and punishments to every one according to his merits or demerits. Tr. of Eq. 3; Lepage, El. du Dr. ch. 1, art. 3, _2 1 Toull. n. 7, note. See Justice.

DISTRICT. A certain portion of the country, separated from the rest for some special purposes. The United States are divided into judicial districts, in each of which is established a district

court; they are also divided into election districts; collection districts, &c.

DISTRICT ATTORNEYS OF THE UNITED STATES. There shall be appointed, in each judicial district, a meet person, learned in the law, to act as attorney of the United States in such district, who shall be sworn or affirmed to the faithful execution of his office. Act of September 24, 1789, s. 35, 1 Story's Laws, 67.

2. His duty is to prosecute, in such district, all delinquents, for crimes and offences cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except in the supreme court, in the district in which that court shall be holden. Ib.

3. Their salaries vary in different districts. Vide Gordon's Dig. art. 403. By the Act of March 3, 1815, 2 Story's L. U. S. 1530, district attorneys are authorized to appoint deputies, in certain cases, to sue in the state courts. See Deputy District Attorney.

DISTRICT COURT. The name of one of the courts of the United States. It is held by a judge, called the district judge. Several courts under the same name have been established by state authority. Vide Courts of the United States.

DISTRICT OP COLUMBIA. The name of a district of country, ten miles square, situate between the states of Maryland and Virginia, over which the national government has exclusive jurisdiction. By the constitution, congress may " exercise exclusive jurisdiction in all cases whatsoever, over such district, not exceeding ten miles square, as may, by, cession of particular states, and the acceptance of congress, become the seat of government of the United States." In pursuance of this authority, the states of Maryland and Virginia, ceded to the United States, a small territory on the banks of the Potomac, and congress, by the Act of July 16, 1790, accepted the same for the permanent seat of the government of the United States. The act provides for the removal of the seat of government from the city of Philadelphia to the District of Columbia, on the first Monday of December, 1800. It is also provided, that the laws of the state, within such district, shall not be affected by the acceptance, until the time fixed for the removal of the government thereto, and until congress shall otherwise by law provide.

2. It seems that the District of Columbia, and the territorial districts of the United States, are not states within the meaning of the constitution, and of the judiciary act, so as to enable a citizen thereof to sue a citizen of one of the states in the federal courts. 2 Cranch, 445; 1 Wheat, 91.

3. By the Act of July 11, 1846, congress retroceded the county of Alexandria, part of the District of Columbia, to the state of Virginia.

DISTRINGAS, remedies. A writ directed to the sheriff, commanding him to distrain one of his goods and chattels, to enforce his compliance of what is required of him, as for his appearance in a court on such a day, and the like. Com. Dig. Process, D 7; Chit. Pr. Index, h. t. Sellon's Pr. Index, h. t.; Tidd's Pr. Index, h. t. 11 East, 353. It is also a form of execution in the action of detinue, and assize of nuisance. Registrum Judiciale, 56; 1 Rawle, 44, 48; Bro. Abr. pl. 26; 22; H. VI. 41. This writ is likewise used to compel the appearance of a corporation agregate. 4 Bouv. Inst. n. 4191.

DISTURBANCE, torts. A wrong done to an incorporeal hereditament, by hindering or disquieting the owner in the enjoyment of it. Finch. L. 187; 3 Bl. Com. 235; 1 Swift's Dig. 522; Com. Dig. Action upon the case for a disturbance, Pleader, 3 I 6; 1 Serg. & Rawle, 298.

DIVIDEND. A portion of the principal, or profits, divided among several owners of a thing.

2. The term is usually applied to the division of the profits arising out of bank or other stocks; or to the division, among the creditors, of the elects of an insolvent estate.

3. In another sense, according to some old authorities, it signifies one part of an indenture. T. L.

DIVISIBLE. The susceptibility of being divided.

2. A contract cannot, in general, be divided in such a manner that an action may be brought, or a right accrue, on a part of it. 2 Penna. R. 454. But some contracts are susceptible of division, as when a reversioner sells a part of the reversion to one man, and a part to another, each shall have an action for his share of the rent, which may accrue on a contract, to pay a particular rent to the reversioner. 3 Whart. 404; and see Apportionment. But when it is to do several things, at several times, an action will lie upon every default. 15 Pick. R. 409. See 1 Greenl. R. 316; 6 Mass. 344. See Entire.

DIVISION, Eng. law. A particular and ascertained part of a county. In Lincolnshire, division means what riding does in Yorkshire.

DIVISION OF OPINION. When, in a company or society, the parties having a right to vote are so divided that there is not a plurality of the whole in favor of any particular proposition, or when the voters are equally divided,

it is said there. is division of opinion.

2. In such a case, the Roman law, which seems founded in reason and common sense, directs, that when the division relates to the quantity of things included, as in the case of a judgment, if one of three judges votes for condemning a man to a fine of one hundred dollars, another, to one of fifty dollars, and the third to twenty−five, the opinion or vote of; the last shall be the rule for the judgment; because the votes of all the others include that of the lowest; this is the case when unanimity is required. But when the division of opinions does not relate to the quantity of things, then it is always to be in favor of the defendant. It was a rule among the Romans that when the judges were equal in number, and they were divided into two opinions in cases of liberty, that opinion which favored it should prevail; and in other cases, it should be in favor of the defendant. Poth. Pand. liv. L. n. MDLXXIV.

3. When the judges of a court are divided into three classes, each holding a different opinion, that class which has the greatest number shall give the judgment; for example, on a habeas corpus, when a court is composed of four judges, and one is for remanding the prisoner, another is for discharging him on his own recognizance, and two others for discharging him absolutely, the judgment will be, that he be discharged. Rudyard's Case, Bac. Ab. Habeas Corpus, B 10, Court 5.

4. It is provided, by the Act of Congress of April 29, 1802, s. 6, that whenever any question shall occur before a circuit court, upon which the opinions of the judges shall be opposed, the point upon which the disagreement shall happen shall, during the same term, upon the request of either party, or their counsel, be stated, under the direction of the judges, and certified, under the seal of the court, to the supreme court, at their next session to be hold thereafter, and shall, by the said court, be finally decided. And the decision of the supreme court, and their order in the premises, shall be, remitted to the circuit court, and be there entered *of record and shall have effect according to the nature of the said judgment and order: Provided, That nothing herein contained shall prevent the cause from proceeding, if, in the opinion of the court, further proceedings can be had without prejudice to the merits: And Provided, also, That imprisonment shall not be allowed, nor punishment in any case be inflicted, where the judges of the said court are divided in opinion upon the question touching the said imprisonment or punishment. See 5 N. S. 407.

DIVORCE. The dissolution of a marriage contracted between a man and a woman, by the judgment of a court of competent jurisdiction, or by an act of the legislature. It is so called from the diversity of the minds of those who are married; because such as are divorced go each a different way from the other. Ridley's Civ. & Eccl. Law, pp. 11, 112. Until a decree of divorce be actually made, neither party can treat the other as sole, even in cases where the marriage is utterly null and void for some preexisting cause. Griffiths v Smith, D. C. of Philadelphia, 3 Penn. Law Journal, 151, 153. A decree of divorce must also be made during the lifetime of both the parties. After the decease of either the marriage will be deemed as legal in all respects. Reeves" Dom. Rel. 204; 1 Bl. Com. 440. See Act of Pennsylvania, March 13, 1815, _5.

2. Divorces are of two kinds; 1. a vinculo matrimonii, (q. v.) which dissolves and totally severs the marriage tie; and, 2. a mensa et thoro, (q. v.) which merely separates the parties.

3. − 1. The divorce a vinculo was never granted by the ecclesiastical law except for the most grave reasons. These, according to Lord Coke, (Co. Litt. 235, a,) are causa praecontractus, causa metus, causa impotentiae, seu frigiditatis, causa affinitatis, et causa consanguinitatis. In England such a divorce bastardizes the issue, and generally speaking, is allowed only on the ground of some preexisting cause. Reeves' Dom. Rel. 204−5; but sometimes by act of parliament for a supervenient cause. 1 Bl. Com. 440. When the marriage was dissolved for canonical causes of impediment, existing previous to its taking place, it was declared void ab initio.

4. In the United States, divorces a vinculo are granted by the state legislatures for such causes as may be sufficient to induce the members to vote in favor of granting them; and they are granted by the courts to which such jurisdiction is given, for certain causes particularly provided for by law.

5. In some states, the legislature never grants a divorce until after the courts have decreed one, and it is still requisite that the legislature shall act, to make the divorce valid. This is the case in Mississippi. In some states, as Wisconsin, the legislature cannot grant a divorce. Const. art. 4, is. 24.

6. The courts in nearly all the states have power to decree divorces a vinculo, for, first, causes which existed and which were a bar to a lawful marriage, as, precontract, or the existence of a marriage between one of the contracting parties and another person, at the time the marriage sought to be dissolved took place; consanguinity, or that degree of relationship forbidden by law; affinity in some states, as Vermont, Rev. Stat. tit. 16, c. 63, s. 1;

impotence, (q. v.) idiocy, lunacy, or other mental imbecility, which renders the party subject to it incapable of making a contract; when the contract was entered into in consequence of fraud. Secondly, the marriage may be dissolved by divorce for causes which have arisen since the formation of the contract, the principal of which are adultery cruelty; wilful and malicious desertion for a period of time specified in the acts of the several states; to these are added, in some states, conviction of felony or other infamous crime; Ark. Rev. Stat. c. 50, s. 1, p. 333; being a fugitive from justice, when charged with an infamous crime. Laws of Lo. Act of April 2, 1832. In Tennessee the hushand may obtain a divorce when the wife was pregnant at the time of marriage with a child of color; and also when the wife refuses for two years to follow her hushand, who has gone bonafide to Tennessee to reside. Act of 1819, c. 20, and Act of 1835, c. 26 Carr. Nich. & Comp. 256, 257. In Kentucky and Maine,, where one of the parties has formed a connexion with certain religionists, whose opinions. and practices are inconsistent with the marriage duties. And, in some states, as Rhode Island and Vermont, for neglect and refusal on the part of the hushand (he being of sufficient ability) to provide necessaries for the subsistence of his wife. In others, habitual drunkenness is a sufficient cause.

7. In some of the states divorces a mensa et thoro are granted for cruelty, desertion, and such like causes, while in others the divorce is a vinculo.

8. When the divorce is prayed for on the ground of adultery, in some and perhaps in most of the states, it is a good defence, 1st. That the other party has been guilty of the same offence. 2. That the hushand has prostituted his wife, or connived at her amours. 3. That the offended party has been reconciled to the other by either express or implied condonation. (q. v.) 4. That there was no intention to commit adultery, as when the party, supposing his or her first hushand or wife dead, married again. 5. That the wife was forced or ravished.

9. The effects of a divorce a vinculo on the property of the wife, are various in the several states. When the divorce is for the adultery or other criminal acts of the hushand, in general the wife's lands are restored to her; when it is caused by the adultery or other criminal act of the wife, the bushand has in general some qualified right of curtesy to her lands; when the divorce is caused by some preexisting cause, as consanguinity, affinity or impotence, in some states, as Maine and Rhode Island, the lands of the wife are restored to her. 1 Hill. Ab. 51, 2. See 2 Ashm. 455; 5 Blackf. 309. At common law, a divorce a vinculo matrimonii bars the wife of dower; Bract. lib. ii. cap. 39, _4; but not a divorce ti mensa et, thoro, though for the crime of adultery. Yet by Stat. West. 1, 3 Ed. I. c. 84, elopement with an adulterer has this effect. Dyer, 195; Co. Litt. 32, a. n. 10; 3 P. Wms. 276, 277. If land be given to a man and his wife, and the heirs of their two bodies begotten, and they are divorced. a vinculo, &c., they shall neither of them have this estate, but he barely tenants for life, notwithstanding the inheritance once vested in them. Co. Litt. 28. If a lease be made to hushand and wife during coverture, and the hushand sows the, land, and afterwards they are divorced a vinculo, &c., the hushand shall have the emblements in that case, for the divorce is the act of law. Mildmay's Case. As to personalty, the rule of the common law is, if one marry a woman who has goods, he may give them or sell them at his pleasure. If they are divorced, the woman shall have the goods back again, unless the hushand has given them away or sold them; for in such case she is without remedy. If the hushand aliened them by collusion, she may aver and prove the collusion, and thereupon recover the goods from the alience. If one be bound in an obligation to a feme sole, and then marry her, and afterwards they are divorced, she may sue her former hushand on the obligation, notwithstanding her action was in suspense during the marriage. And for such things as belonged to the wife before marriage, if they cannot be known, she could sue for, after divorce, only in the court Christian, for the action of account did not lie, because he was not her receiver to account. But for such things as remain in specie, and may be known, the common law gives her an action of detinue. 26 Hen. VIII. 1.

10. When a divorce a vinculo takes place, it is, in general, a bar to dower; but in Connecticut, Illinois, New York, and, it seems, in Michigan, dower is not barred by a divorce for the fault of the hushand. In Kentucky, when a divorce takes place for the fault of the hushand, the wife is entitled as if he were dead. 1 Hill. Ab. 61, 2.

11. − 2. Divorces a mensa et thoro, are a mere separation of the parties for a time for causes arising since the marriage; they are pronounced by tribunals of competent jurisdiction. The effects of the sentence continue for the time it was pronounced, or until the parties are reconciled. A. divorce a mensa et thoro deprives the hushand of no marital right in respect to the property of the wife. Reeve's Dom. Rel. 204−5. Cro. Car. 462; but see 2 S. & R. 493. Children born after a divorce a mensa et thoro are not presumed to be the hushand's, unless he afterwards cohabited with his wife. Bac. Ab. Marriage, &c. E.

12. By the civil law, the child of parents divorced, is to be brought up by the innocent party, at the expence of

the guilty party. Ridley's View, part 1, ch. 3, sect. 9, cites 8th Collation. Vide, generally, 1 Bl. Com. 440, 441 3 Bl. Com. 94; 4 Vin. Ab. 205; 1 Bro. Civ. Law, 86; Ayl. Parerg. 225; Com. Dig. Baron and Feme, C;−Coop. Justin. 434, et seq.; 6 Toullier, No. 294, pa. 308; 4 Yeates' Rep. 249; 5 Serg. & R. 375; 9 S. & R. 191, 3; Gospel of Luke, eh, xvi.
v. 18; of Mark, ch. x. vs. 11, 12; of Matthew, ch. v. v. 32, ch. xix. v. 9; 1 Corinth. ch. vii. v. 15; Poynt. on Marr. and Divorce, Index, h. t.; Merl. Rep. h. t.; Clef des Lois Rom. h. t. As to the effect of the laws of a foreign state, where the divorce was decreed, see Story's Confl. of Laws, ch. 7, _200. With regard to the ceremony of divorce among. the Jews, see 1 Mann. & Gran. 228; C. 39. Eng. C. L. R. 425, 428. And as to divorces among the Romans, see Troplong, de l'Influence du Christianisme sur le Droit Civil des Romains, ch. 6. p. 205.

DOCKET, practice. A formal record of judicial proceedings.

2. The docket should contain the names of the parties, and a minute of every proceeding in the case. It is kept by the clerk or prothonotary of the court. A sheriff's docket is not a record. 9 Serg. & R. 91. Docket is also said to be a brief writing, on a small piece of paper or parchment, containing the substance of a larger writing.

DOCTORS COMMONS. A building in London used for a college of civilians. Here the judge of the court of arches, the judge of the admiralty, and the judge of the court of Canterbury, with other eminent civilians, reside. Commons signifies, in old English, pittance or allowance; because it is meant in common among societies, as Universities, Inns of Courts, Doctors Commons, &c. The Latin word is, demensum a demetiendo; dividing every one his part Minsheu. It is called Doctors Commons, because the persons residing there live in a collegiate commoning together.

DOCUMENTS, evidence. The deeds, agreements, title papers, letters, receipts, and other written instruments used to prove a fact. Among the civilians, by documents is also understood evidence delivered in the forms established by law, of whatever nature such evidence may be, but applied principally to the testimony of witnesses. Savig. Dr. Rom. _165.

2. Public documents are all such records, papers and acts, as are filed in the public offices of the United States or of the several states; as, for example, public statutes, public proclamations, resolutions of the legislature, the journals of either branch of the legislature, diplomatic correspondence communicated by the president to congress, and the like. These are in general evidence of the facts they contain or recite. 1 Greenl. _491.

DOG. A well known domestic animal. In almost all languages this word is, a term or name of contumely or reproach. See 3 Bulst. 226; 2 Mod. 260; 1 Leo. 148; and the title action on the case for defamation in the Digests; Minsheu's Dictionary.

2. A dog is said at common law to have no intrinsic value, and he cannot therefore be the subject of larceny. 4 Bl. Com. 236; 8 Serg. & Rawle, 571. But the owner has such property in him, that he may maintain trespass for an injury to his dog; "for a man may have property in some things which are of so base nature that no felony can be committed of them, as of a bloodhound or mastiff." 12 H. VIII. 3; 18 H. VIII. 2; 7 Co. 18 a; Com. Dig. Biens, F; 2 Bl. Com. 397; Bac. Ab. Trover, D; F. N. B. 86; Bro. Trespass, pl. 407 Hob. 283; Cro. Eliz. 125; Cro. Jac. 463 2 Bl. Rep.

3. Dogs, if dangerous animals, may lawfully be killed, when their ferocity is known to their owner, or in self−defence 13 John. R. 312; 10 John. R. 365; and when bitten by a rabid animal, a dog may be lawfully killed by any one. 13 John. R. 312.

4. When a dog, in consequence of his vicious habits, becomes a common nuisance, the owner may be indicted. And when he commits an injury, if the owner had a knowledge of his mischievous propensity, he is liable to an action on the case. Bull. N. P. 77; 2 Str. 1264; Lord Raym. 110. 1 B. & A. 620; 4 Camp. R. 198; 2 Esp. R. 482; 4 Cowen, 351; 6 S. & R. 36; Addis. R. 215; 1 Scam. 492 23 Wend 354; 17 Wend. 496; 4 Dev. & Batt. 146.

5. A man has a right to keep a dog to guard his premises, but not to put him at the entrance of his house, because a person coming there on lawful business may be injured by him, and this, though there may be another entrance to the house. 4 C. & P. 297; 6 C. & P. 1. But if a dog be chained, and a visitor so incautiously go near him that he is bitten, he has no right of action against the owner. 3 Chit. Bl. 154, n. 7. Vide Animal; Knowledge; Scienter.

DOGMA, civil law. This word is used in the first chapter, first section, of the second Novel, and signifies an ordinance of the senate. See also Dig. 27, 1, 6.

DOLI CAPAX. Capable of deceit, mischief, having knowledge of right and wrong. See Discretion; Criminal law, 2.

DOLLAR, money. A silver coin of the United States of the value of one hundred cents, or tenth part of an eagle.

2. It weighs four hundred and twelve and a half grains. Of one thousand parts, nine hundred are of pure silver and one hundred of alloy. Act of January 18, 1837, ss. 8 & 9, 4 Sharsw. Cont. of Story's L. U. S. 2523, 4; Wright, R. 162.

3. In all computations at the custom−house, the specie dollar of Sweden and Norway shall be estimated at one hundred and six cents. The specie dollar of Denmark, at one hundred and five cents. Act of May 22, 1846.

DOLUS, civil law. A fraudulent address or trick used to deceive some one; a fraud. Dig. 4, 3, 1; Code, 2, 21.

2. Dolus differs from fault in this, that the latter proceeds from an error of the understanding; while to constitute the former there must be a will or intention to do wrong. Wolff, Inst. _17.

DOMAIN. It signifies sometimes, dominion, territory governed − sometimes, possession, estate − and sometimes, land about the mansion house of a lord. By domain is also understood the right to dispose at our pleasure of what belongs to us.

2. A distinction, has been made between property and domain. The former is said to be that quality which is conceived to be in the thing itself, considered as belonging to such or such person, exclusively of all others. By the latter is understood that right which the owner has of disposing of the thing. Hence domain and property are said to be correlative terms; the one is the active right to dispose, the other a passive quality which follows the thing, and places it at the disposition of the owner. 3 Toull. n. 8 3. But this distinction is too subtle for practical use. Puff. Droit de la Nature et des Gens, loi 4, c. 4, _2. Vide 1 B1. Com. 105, 106; 1 Bouv. Inst. n. 456; Clef des Lois Rom. h. t.; Domat, h. t.; 1 Hill. Ab. 24; 2 Hill. Ab. 237; and Demesne as Of fee; Property; Things.

DOME−BOOK, DOOM−BOOK or DOM−BEC A book in which Alfred the Great, of England, after uniting the Saxon heptarchy, collected the various customs dispersed through the kingdom, and digested them into one uniform code. 4 Bl. Com. 411.

DOMESDAY, or DOMESDAY−BOOK. An ancient record made in the time of William the Conqueror, and now remaining in the English exchequer, consisting of two volumes of unequal sizes, containing surveys of the lands in England.

DOMESTICS. Those who reside in the same house with the master they serve the term does not extend to workmen or laborers employed out of doors. 5 Binn. R. 167; Merl. Rep. h. t. The Act of Congress of April 30, 1790, s. 25, uses the word domestic in this sense.

2. Formerly, this word was used to designate those who resided in the house of another, however exalted their station, and who performed services for him. Voltaire, in writing to the French queen, in 1748, says) " Deign to consider, madam, that I am one of the domestics of the king, and consequently yours, lily companions, the gentlemen of the king," &c.

3. Librarians, secretaries, and persons in such honorable employments, would not probably be considered domestics, although they might reside in the house of their respective employers.

4. Pothier, to point out the distinction between a domestic and a servant, gives the following example: A literary man who lives and lodges with you, solely to be your companion, that you may profit by his conversation and learning, is your domestic; for all who live in the same house and eat at the same table with the owner of the house, are his domestics, but they are not servants. On the contrary, your Valet de, chambre, to whom you pay wages, and who sleeps out of your house, is not, properly speaking, your domestic, but your servant. Poth. Proc. Cr. sect. 2, art. 5, _5; Poth. Ob. 710, 828; 9 Toull. n. 314; H. De Pansey, Des Justices de Paix, c. 30, n. 1. Vide Operative; Servant.

DOMICIL. The place where a person has fixed his ordinary dwelling, without a present intention of removal. 10 Mass. 488; 8 Cranch, 278; Ersk. Pr. of Law of Scotl. B. 1, tit. 2, s. 9; Denisart, tit. Domicile, 1, 7, 18, 19; Voet, Pandect, lib. 5, tit. 1, 92, 97; 5 Madd. Ch. R. 379; Merl. Rep. tit. Domicile; 1 Binn. 349, n.; 4 Humph. 346. The law of domicil is of great importance in those countries where the maxim "actor sequitur forum rei" is applied to the full extent. Code Civil, art. 102, &c.; 1 Toullier, 318.

2. A man cannot be without a domicil, for he is not supposed to have abandoned his last domicil until he has acquired a new one. 5 Ves. 587; 3 Robins. 191; 1 Binn. 349, n.; 10 Pick. 77. Though by the Roman law a man might abandon his domicil, and, until be acquired a. new one, he was without a domicil. By fixing his residence at two different places a man may have two domicils at one and the same time; as, for example, if a foreigner, coming to this country, should establish two houses, one in New York and the, other in New Orleans, and pass one−half of the year in each; he would, for most purposes, have two domicils. But it is to be observed that

circumstances which might be held sufficient to establish a commercial domicil in time of war, and a matrimonial, or forensic or political domicil in time of peace, might not be such as would establish a principal or testamentary domicil, for there is a wide difference in applying the law of domicil to contracts and to wills. Phill. on Dom. xx; 11 Pick. 410 10 Mass. 488; 4 Wash. C. C. R. 514.

3. There are three kinds of domicils, namely: 1. The domicil of origin. domicilium originis vel naturale. 2. The domicil by operation of law, or necessary domicil. 3. Domicil of choice.

4. − _1. By domicil of origin is understood the home of a man's parents, not the place where, the parents being on a visit or journey, a child happens to be born. 2 B. & P. 231, note; 3 Ves. 198. Domicil of origin is to be distinguished from the accidental place of birth. 1 Binn. 349.

5. − _2. There are two classes of persons who acquire domicil by operation of law. 1st. Those who are under the control of another, and to whom the law gives the domicil of another. Among these are, 1. The wife. 2. The minor. 3. The lunatic, &c. 2d. Those on whom the state affixes a domicil. Among this class are found, 1. The officer. 2. The prisoner, &c.

6. − 1st. Among those who, being under the control of another, acquire such person's domicil, are, 1. The wife. The wife takes the domicil of her hushand, and the widow retains it, unless she voluntarily change it, or unless, she marry a second time, when she takes the domicil of the second hushand. A party may have two domicils, the one actual, the other legal; the hushand's actual and the wife's legal domicil, are, prima facie, one. Addams' Ecc. R. 5, 19. 2. The domicil of the minor is that of the father, or in Case of his death, of the mother. 5 Ves. 787; 2 W. & S. 568; 3 Ohio R. 101; 4 Greenl. R. 47. 3. The domicil of a lunatic is regulated by the same principles which operated in cases of minors the domicil of such a person may be changed by the direction, or with the assent of the guardian, express or implied. 5 Pick. 20.

7. − 2d. The law affixes a domicil. 1. Public officers, such as the president of the United States, the secretaries and such other officers whose public duties require a temporary residence at the capital, retain their domicils. Ambassadors preserve the domicils which they have in their respective countries, and this privilege extends to the ambassador's family. Officers, soldiers, and marines, in the service of the United States, do not lose their domicils while thus employed. 2. A prisoner does not acquire a domicil where the prison is, nor lose his old. 1 Milw. R. 191, 2.

8. − _3. The domicil of origin, which has already been explained, remains until another has been acquired. In order to change such domicil; there must be an actual removal with an intention to reside in the place to which the party removes. 3 Wash. C. C. R. 546. A mere intention to remove, unless such intention is carried into effect, is not sufficient. 5 Greenl. R. 143. When he changes it, he acquires a domicil in the. place of his new residence, and loses his original domicil. But upon a return with an intention to reside, his original domicil is restored. 3 Rawle, 312; 1 Gallis. 274, 284; 5 Rob. Adm. R. 99.

9. How far a settlement in a foreign country will impress a hostile character on a merchant, see Chitty's Law of Nations, 31 to 50; 1 Kent, Com. 74 to 80; 13 L. R. 296; 8 Cranch, 363; 7 Cranch, 506; 2 Cranch, 64 9 Cranch, 191; 1 Wheat. 46; 2 Wheat 76; 3 Wheat. 1 4 2 Gall. R. 268; 2 Pet. Adm. Dec. 438 1 Gall. R. 274. As to its effect in the administration of the assets of a deceased non−resident, see 3 Rawle's R. 312; 3 Pick. R. 128; 2 Kent, Com. 348; 10 Pick. R. 77. The law of Louisiana relating to the "domicil and the manner of changing the same" will be found in the Civil Code of Louisiana, tit. 2, art. 42 to 49. See, also, 8 M. R. 709; 4 N. S. 51; 6 N. S. 467; 2 L. R. 35; 4 L. R. 69; 5 N. S. 385 5 L. R. 332; 8 L. R. 315; 13 L. R. 297 11 L. R. 178; 12 L. R. 190. See, on the subject generally, Bouv. Inst. Index, h. t. 2 Bos. & Pul. 230, note 1 Mason's Rep. 411; Toullier, Droit Civil Francais, liv. 1, tit. 3, n., 362 a 378; Domat, tome 2, liv. 1, s. 3; Pothier, Introduction Generale aux Coutumes, n. 8 a 20; 1 Ashm. R. 126; Merl. Rep. tit. Domicile 3 Meriv. R. 79; 5 Ves. 786; 1 Crompt. & J. 151; 1 Tyrwh. R. 91; 2 Tyrwh. R. 475; 2 Crompt. & J. 436 3 Wheat. 14 3 Rawle, 312; 7 Cranch, 506 9 Cranch, 388; 5 Pick. 20; 1 Gallis, 274, 545; 10 Mass. 488 11 Mass. 424; 13 Mass. 501 2 Greenl. 411; 3 Greenl 229, 354; 4 Greenl. 47; 8 Greenl. 203; 5 Greenl. 143; 4 Mason, 308; 3 Wash. C. C. R. 546; 4 Wash. C. C. R. 514 4 Wend, 602; 8 Wend. 134; 5 Pick. 370 10 Pick. 77; 11 Pick. 410; 1 Binn. 349, n.; Phil. on Dom. passim.

DOMINANT. estates. In the civil law, this term is used to signify the estate to which a servitude or easement is due from another estate; for example, where the owners of the estate, Blackacre, have a right of way or passage over the estate Whiteacre, the former is called the dominant, and the latter the servient estate. Bouv. Inst. n. 1600.

DOMINION. The right of the owner of a thing to use it or dispose of it at his pleasure. See Domain; 1 White's New Coll. 85; Jacob's Intr. 39.

DOMINIUM, empire, domain. It is of three kinds: 1, Directum dominium, or usufructuary dominion; dominium utile, as between landlord and tenenant; or, 2. It is to full property, and simple property. The former is such as belongs to the cultivator of his own estate; the other is the property of a tenant. 3. Dominion acquired by the law of nations, and dominion acquired by municipal law. By the law of nations, property may be acquired by occupation, by accession, by commixtion, by use or the pernancy of the usufruct, and by tradition or delivery. As to the dominium eminens, the right of the public, in cases of emergency, to seize upon the property of individuals, and convert it to public use, and the right of individuals, in similar cases, to commit a trespass on the persons and properties of others, see the opinion of chief justice McKean in Respublica v. Sparhawk, 1 Dallas, 362, and the case of Vanhorn v. Dorrance, 2 Dall. Rep. 304. See, further, as to dominium eminens, or the right of the community to take, at a fair price, the property of individuals for public use, the supplement of 1802 to the Pennsylvania compromising law, respecting the Wyoming controversy; also, Vattel, l. 1, c. 20, __244−248; Bynkershoek, lib. 2, c. 15; Rousseau's Social Compact, c. 9; Domat; l. 1, tit. 8, _l, p. 381, fol. ed.; the case of a Jew, whom the grand seignior was compelled by the mufti to purchase out, cited in Lindsay et al. v. The Commissioners, 2 Bay. S. Car. Rep. 41. See Eminent domain.

DOMITAE. Subdued, tame,. not wild; as, animals domitae, which are tame or domestic animals.

DOMO REPARANDO. the name of an ancient writ in favor of a party who was in danger of being injured by the fall, of his neighbor's house.

DONATIO MORTIS CAUSA, contracts, legacies. A gift in prospect of death. When a person in sickness, apprehend ing his dissolution near, delivers, or causes to be delivered to another, the possession of any personal goods, to keep as his own, in case of the donor's decease. 2 Bl. Com. 514 see Civ. Code of Lou. art. 1455.

2. The civil law defines it to be a gift under apprehension of death; as, when any thing is given upon condition that if the donor dies, the donee shall possess it absolutely, or return it if the donor should survive, or should repent of having made the gift, or if the donee should die before the donor. 1 Miles' Rep. 109−117.

3. Donations mortis causa, are now reduced, as far as possible, to the similitude of legacies. Inst. t. 7, De Donationibus. See 2 Ves. jr. 119; Smith v. Casen, mentioned by the reporter at the end of Drury v. Smith, 1 P. Wms. 406; 2 Ves. sen. 434; 3 Binn. 866.

4. With respect to the nature of a donatio mortis causa, this kind of gift so far resembles a legacy, that it is ambulatory and incomplete during the donor's life; it is, therefore, revocable by him; 7 Taunt. 231; 3 Binn. 366 and subject to his debts upon a deficiency of assets. 1 P. Wms. 405. But in the following particulars it differs from a legacy: it does riot fall within an administration, nor require any act in the executors to perfect a title in the donee. Rop. Leg. 26.

5. The following circumstances are required to constitute a good donatio mortis causa. 1st. That the thing given be personal property; .3 Binn. 370 a bond; 3 Binn. 370; 3 Madd. R. 184; bank notes; 2 Bro. C. C. 612; and a check offered for payment during the life of the donor, will be so considered. 4 Bro. C. C. 286.

6. − 2d. That the gift be made by the donor in peril of death, and to take effect only in case the giver die. 3 Binn. 370 4 Burn's Ecc. Law, 110.

7. − 3d. That there be an actual delivery of the subject to, or for the donee, in cases where such delivery can be made. 3 Binn. 370; 2 Ves. jr. 120. See 9 Ves. 1 , 7 Taunt. 224. But such delivery can be made to a third person for the use of the donee. 3 Binn. 370:

8. It is an unsettled question whether such kind of gift appearing in writing, without delivery of the subject, can be supported. 2 Ves. jr. 120. By the Roman and civil law, a gift mortis causa might be made in writing. Dig. lib. 39, t. 6, 1. 28 2 Ves. sen. 440 1 Ves. sen. 314.

9. In Louisiana, no disposition mortis causa, otherwise than by last will and testament, is allowed. Civ. Code, art. 1563. See, in general, 1 Fonb. Tr. Eq. 288, n. (p); Coop. Just. 474, 492; Civ. Code of Lo. B. 3, 2, c. 1 and 6. Vin. Abr. Executors, Z 4; Bac. Abr. Legacies, A; Supp. to Ves. jr. vol. 1, p. 143, 170; vol. 2, 97. 215; Rop. Leg: oh. 1; Swinb. pt. 1, s. 7 1 Miles, 109. &c.

DONATION, contracts. The act by which the owner of a thing, voluntarily transfers the title and possession of the same, from himself to another person, without any consideration; a gift. (q. v.)

2. A donation is never perfected until it is has been accepted, for the acceptance (q. v.) is requisite to make the donation complete. Vide Assent, and Ayl. Pand. tit. 9 Clef des Lois Rom. h. t.

DONATION INTER Vivos, contracts. A contract which takes place by the mutual consent, of the giver, who divests himself of the thing given in order to transmit the title of it to the donee gratuitously, and the donee, who

accepts the thing and acquires a legal title to it.

2. This donation takes place when the giver is not in any immediate apprehension of death, which distinguishes it from a donatio mortis causa. (q. v.) 1 Bouv. Inst. n. 712. And see Civ. Code of Lo. art. 1453 Justin. Inst. lib. 2, tit. 7, _2 Coop. Justin. notes 474−5 Johns. Dig. N. Y. Rep. tit. Gift.

DONEE. He to whom a gift is made, or a bequest given; one who is invested with a power to select an appointee, he is sometimes called an appointer.

DONIS, STATUTE DE. The stat. West. 2, namely, 13 Edw. I. , c. 1, called the statute de donis conditionalibus. This statute revives, in some sort, the ancient feudal restraints, which were originally laid on alienations. 2 Bl. Com. 12.

DONOR. He who makes a gift. (q. v.)

DOOM. This word formerly signified a judgment. T. L.

DORMANT PARTNER. One who is a participant in the profits of a firm, but his name being concealed, his interest is not apparent. See Partners,

DOOR. The place of usual entrance in a house, or into a room in the house.

2. To authorize the breach of an outer door in order to serve process, the process must be of a criminal nature; and even then a demand of admittance must first have been refused. 5 Co. 93; 4 Leon. 41; T. Jones, 234; 1 N. H. Rep. 346; 10 John. 263; 1 Root, 83 , 134; 21 Pick. R. 156. The outer door may also be broken open for the purpose of executing a writ of habere facias. 5 Co. 93; Bac. Ab. Sheriff, N. 3.

3. An outer door cannot in general be broken for the purpose of serving civil process; 13 Mass. 520; but after the defendant has been arrested, and he takes refuge in his own house, the officer may justify breaking an outer door to take him. Foster, 320; 1 Roll. R. 138; Cro. Jac. 555.; 10 Wend. 300; 6 Hill, N. Y. Rep. 597. When once an officer is in the house, he may break open an inner door to make an arrest. Kirby, 386 5 John. 352; 17 John. 127, See 1 Toull. n. 214, p. 88.

DOT. This French word is adopted in Louisiana. It signifies the fortune, portion, or dowry, which a woman brings to her hushand by the marriage. 6 N. S. 460. See Dote; Dowry.

DOTAL PROPERTY. By the civil law, and in Louisiana, by this term is understood that property, which the wife brings to the hushand to assist him in bearing the expenses of the marriage establishment. Civil Code of Lo. art. 2315. Vide Extradotal property.

DOTATION, French law. The act by which the founder of a hospital, or other charity, endows it with property to fulfil its destination.

DOTE, Span. law. The property which the wife gives to the hushand on account of marriage.

2. It is divided into adventitia and profectitia; the former is the dote which the father or grandfather, or other of the ascendants in the direct paternal line, give of their own property to the hushand; the latter (adventitia) is that property which the wife gives to the hushand, or that which is given to him for her by her mother, or her collateral relations, or a stranger. Aso & Man. Inst. B. 1, t. 7, c . 1, _i.

DOTE ASSIGNANDO, Eng. law. The name of a writ which lay in favor of a widow, when it was found by office that the king's tenant was seised of tenements in fee or fee tail at the time of his death, and that he held of the king in chief.

DOTE UNDE NIHIL HABET. The name of a writ of dower which a widow sues against the tenant, who bought land of her hushand in his lifetime, and in which her dower remains, of which he was seised solely in fee simple or fee tail. F. N. B. 147; Booth, Real Act. 166. See Dower unde nihil habet

DOUBLE. Twofold; as, double cost; double insurance; double plea.

DOUBLE COSTS practice. According to the English law, when double costs are given by the statute, the term is not to be understood, according to its literal import, twice the amount of single costs, but in such case the costs are thus calculated. 1. the common costs; and, 2. Half of the common costs. Bac. Ab. Costs, E; 2 Str. 1048. This is not the rule in New York, nor in Pennsylvania. 2 Dunl. Pr. 731; 2 Rawle's R. 201.

2. In all cases where double or treble costs are claimed, the party must apply to the court for them before he can proceed to the taxation, otherwise the proceeding will be set aside as irregular. 4 Wend. R. 216. Vide Costs; and Treble Costs.

DOUBLE ENTRY. A term used among merchants to signify that books of account are kept in such a manner that they present the debit and credit of every thing. The term is used in contradistinction to single entry.

2. Keeping books by double entry is more exact, because, presenting all the active and all the passive property of

the merchant, in their respective divisions, there cannot be placed an article to, an account, which does not pass to some correspondent account elsewhere. It presents a perfect, view of each operation, and, from the relation and comparison of the divers accounts, which always keep pace with each other, their correctness is proved; for every commercial operation is necessarily composed of two interests, which are connected together. The basis of this mode of keeping books, and the only condition required, is to write down every transaction and nothing else; and to make no entry without putting it down to the two agents of the operation. By this means a merchant whose transactions are extensive, comprising a great number of subjects, is able to known not only the general situation of his affairs, but also the situation of each particular operation. For example, when a merchant receives money, his cash account becomes debtor, and the person who has paid it, or the merchandise sold, is credited with it; when he pays money, the cash account, is credited, And the merchandise bought, or the obligation paid, is debited with it. See Single entry.

DOUBLE INSURANCE, contracts. Where the insured makes, two insurances on the same risk, and the same interest. 12 Mass. 214. It differs from re−insurance in this, that it is made by the insured, with a view of receiving a double satisfaction in case of loss; whereas a re−insurance is made by a former insurer, his executors or assigns, to protect himself and his estate from a risk to which they were liable by the first insurance. The two policies are considered as making but one insurance. They are good to the extent of the value of the effects put in risk; but the insured shall not be permitted to recover a double satisfaction. He can sue the underwriters on both the policies, but he can only recover the real amount of his loss, to which all the underwriters on both shall contribute in proportion to their several subscriptions. Marsh. Ins. B. 1, c. 4, s. 4; 5 S. & R. 473; 4 Dall. 348; 1 Yeates, 161; 9 S. & R. 103; 1 Wash . C. C. Rep. 419; 2 Wash. C. C. Rep. 186; 2 Mason, 476.

DOUBLE PLEA. The alleging, for one single purpose, two or more distinct grounds of defence, when one of them would be as effectual in law, as both or all. Vide Duplicity.

DOUBLE VOUCHER. A common recovery is sometimes suffered with double voucher, which occurs when the person first vouched to warranty, comes in and vouches over a third person. See a precedent, 2 Bl. Com. Appx. No. V. p. xvii.; also, Voucher.

2. The neecessity for double voucher arises when the tenant in tail is not the tenant in the writ, but is tenant by warranty; that is, where he is vouched, and comes in and confesses the warranty. Generally speaking, to accomplish this result, a previous conveyance is necessary, by the tenant in tail, to a third person, in order to make such third person tenant to a writ of entry. Preston on Convey. 125−6.

DOUBLE WASTE. When a tenant, bound to repair, suffers a house to be wasted, and then unlawfully fells timber to repair it, he is said to commit double waste. Co. Litt. 53. See Waste.

DOUBT. The uncertainty which exists in relation to a fact, a proposition, or other thing; or it is an equipoise of the mind arising from an equality of contrary reasons. Ayl. Pand. 121.

2. The embarrassing position of a judge is that of being in doubt, and it is frequently the lot of the wisest and most enlightened to be in this condition, those who have little or no experience usually find no difficulty in deciding the most, problematical questions.

3. Some rules, not always infallible, have been adopted in doubtful cases, in order to arrive at the truth. 1. In civil cases, the doubt ought to operate against him, who having it in his power to prove facts to remove the doubt, has neglected to do so. In cases of fraud when there is a doubt, the presumption of innocence (q. v.) ought to remove it. 2. In criminal cases, whenever a reasonable doubt exists as to the guilt of the accused that doubt ought to operate in his favor. In such cases, particularly, when the liberty, honor or life of an individual is at stake, the evidence to convict ought to be clear, and devoid of all reasonable doubt. See Best on Pres. _195; Wils. on Cir. Ev. 26; Theory of Presumptive Proof, 64; 33 How. St. Tr. 506; Burnett, Cr. Law of Scotl. 522; 1 Greenl. Ev. _1 D'Aguesseau, Oeuvres, vol. xiii. p. 242; Domat, liv. 3, tit. 6.

4. No judge is presumed to have any doubt on a question of law, and he cannot therefore refuse to give a judgment on that account. 9 M. R. 355; Merlin, Repert. h. t.; Ayliffe's Pand. b. 2, t. 17; Dig. lib. 34, t. 5; Code, lib. 6, t. 38. Indeed, in some countries; in China, for example, ignorance of the law in a judge is punishable with blows. Penal Laws of China, B. 2, s. 61.

DOVE. The name of a well known bird.

2. Doves are animals ferae naturae, and not the subject of larceny, unless they are in the owner's custody; as, for example, in a dove−house, or when in the nest before they can fly. 9 Pick. 15. See Whelp.

DOWAGER. A widow endowed; one who has a jointure.

2. In England, this is a title or addition given to the widows of princes, dukes, earls, and other noblemen.

DOWER. 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. Watk. Prin. Con. 38; Litt. _36; 7 Greenl. 383. Vide Estate in Dower. This is dower at common law.

2. Besides this, in England there are three other species of dower now subsisting; namely, dower by custom, which is, where a widow becomes entitled to a certain portion of her hushand's lands in consequence of some local or particular custom, thus by the custom of gavelkind, the widow is entitled to a moiety of all the lands and tenements, which her hushand held by that tenure.

3. Dower ad ostium ecclesiae, is, when a man comes to the church door to be married, after troth plighted, endows his wife of a certain portion of his lands.

4. Dower ex assensu patris, was only a species of dower ad ostium ecclesice, made when the hushand's father was alive, and the son, with his consent expressly given, endowed his wife, at the church door, of a certain part of his father's lands.

5. There was another kind, de la plus belle, to which the abolition of military tenures has put an end. Vide Cruise's Dig. t. 6, c. 1; 2 Bl. Com. 129; 15 Serg. & Rawle, 72 Poth. Du Douaire.

6. Dower is barred in various ways; 1. By the adultery of the wife, unless it has been condoned. 2. By a jointure settled upon the wife. 2 Paige, R. 511. 3. By the wife joining her hushand in a conveyance of the estate. 4. By the hushand and wife levying a fine, or suffering a common recovery. 10 Co. 49, b Plowd. 504. 5. By a divorce a vinculo matrimonii. 6. By an acceptance, by the wife, of a collateral satisfaction, consisting of land, money, or other chattel interest, given instead of it by the hushand's will, and accepted after the hushand's death. In these cases she has a right to elect whether to take her dower or the bequest or devise. 4 Monr. R. 265; 5 Monr. R. 58; 4 Desaus. R. 146; 2 M'Cord, Ch. R. 280; 7 Cranch, R. 370; 5 Call, R. 481; 1 Edw. R. 435 3 Russ. R. 192; 2 Dana, R. 342.

7. In some of the United States, the estate which the wife takes in the lands of her deceased hushand, varies essentially from the right of dower at common law. In some of the states, she takes one−third of the profits, or in case of there being no children, one half. In others she takes the same right in fee, when there are no lineal descendants; and in one she takes two−thirds in fee, when there are no lineal ascendauts or descendants, or brother or sister of the whole or half blood. 1 Hill. Ab. 57, 8; see Bouv. Inst. Index, h. t.

DOWER UNDE NIHIL HABET. This is a writ of right in its nature. It lies only against the tenant of the freehold. 12 Mass. 415 2 Saund. 43, note 1; Hen. & Munf. 368 F. N. B. 148. It is a writ of entry, where the widow is deforced of the whole of her dower. Archb. Plead. 466, 7. A writ of right of dower lies for the whole or a part. 1 Rop. on Prop. 430; Steph. on Pl. 10. n; Booth, R. A. 166; Glanv. lib. 4. c. 4, 5; 9 S. & R. 367. If the heir is fourteen years of age, the writ goes to him, if not, to his guardian. If the land be wholly aliened, it goes to the tenant, F. N. B. 7, or pernor of the profits, who may vouch the heir. If part only be aliened, the writ goes to the heir or guardian. The tenant cannot impart; 2 Saund. 44, n;. 1 Rop. on Prop. 430; the remedy being speedy. Fleta, lib. 5. o. 25, _8, p. 427. He pleads without defence. Rast. Ent. 232, b. lib. Int. fo. 15; Steph. Pl. 431 Booth, 118; Jackson on Pl. 819.

DOWRESS. A woman entitled to dower.

2. In order to entitle a woman to the rights of a dowress at common law, she must have been lawfully married, her hushand must be dead, he must have been seised, during the coverture, of an estate subject to dower. Although the marriage may be void able, if it is not absolutely void at his death, it is sufficient to support the rights of the dowress. The hushand and wife must have been of sufficient age to consent.

3. At common law an alien could not be endowed, but this rule has been changed in several states. 2 John. Cas. 29; 1 Harr. & Gill, 280.; 1 Cowen, R. 89; 8 Cowen, R. 713.

4. The dowress' right may be defeated when her hushand was not of right seised of an estate of inheritance; as, for example, dower will be defeated upon the restoration of the seisin under the prior title in the case of defeasible estates, as in case of reentry for a condition broken, which abolishes the intermediate seisin. Perk. s. 311, 312, 317.

DOWRY. Formerly applied to mean that which a woman brings to her hushand in marriage; this is now called a portion. This word is sometimes confounded with dower. Vide Co. Litt. 31; Civ. Code of Lo. art. 2317; Dig. 23, 3,

76; Code, 5, 12, 20.

DRAGOMAN. An interpreter employed in the east, and particularly at the Turkish court.

2. The Act of Congress of August 26, 1842, c. 201, s. 8, declares that it shall not be lawful for the president of the United States to allow a dragoman at Constantinople, a salary of more than two thousand five hundred dollars.

DRAIN. Conveying the water from one place to another, for the purpose of drying the former

2. The right of draining water through another map's land. This is an easement or servitude acquired by grant or prescription. Vide 3 Kent, Com. 436 7 Mann. & Gr. 354; Jus aguaeductus; Rain water; Stillicidium.

DRAwhACK, com. law. An allowance made by the government to merchants on the reexportation of certain imported goods liable to duties, which, in some cases, consists of the whole; in others, of a part of the duties which had been paid upon the importation. For the various acts of congress which regulate drawhacks, see Story, L. U. S. Index, h. t.

DRAWEE. A person to whom a bill of exchange is addressed, and who is requested to pay the amount of money therein mentioned.

2. The drawee may be only one person, or there may be several persons. The drawee may be a third person, or a man may draw a bill on himself. 18 Ves. jr. 69; Carth. 509; 1 Show. 163; 3 Burr. 1077.

3. The drawee should accept or refuse to accept the bill at furthest within twenty−four hours after presentment. 2 Smith's R. 243; 1 Ld. Raym. 281 Com. Dig. Merchant, F 6; Marius, 15; but it is said the holder is entitled. to a definite answer if the mail go out in the meantime. Marius' 62. In case the bill has been left with the drawee for his acceptance, he will be considered as having accepted it, if he keep the bill a great length of time, or do any other act which gives credit to the bill, and induces the holder not to protest it; or is intended as a surprise upon him, and to induce him to consider the bill as accepted. Chit. on Bills, 227. When he accepts it, it is his duty to pay it at maturity.

DRAWER, contracts. The party who makes a bill of exchange.

2. The obligations of the drawer to the drawee and every subsequent holder lawfully entitled to the possession, are, that the person on whom he draws is capable of binding himself by his acceptance that he is to be found at the place where he is described to reside, if a description be given in the bill; that if the bill be duly presented to him, he will accept in writing on the bill itself, according to its tenor, and that he will pay it when it becomes due, if presented in proper time for that purpose; and that if the drawee fail to do either, he, the drawer, will pay the amount, provided he have due notice of the dishonor. 3. The engagement of the drawer of a bill is in all its parts absolute and irrevocable. 2 H. Bl. 378; 3 B. & P. 291; Poth. Contr. de Change, n. 58; Chit. Bills, 214, Dane's Ab. h. t.

DRAWING. A representation on paper, card, or other substance.

2. The Act of Congress of July 4, 1836, section 6, requires all persons who apply for letters patent for an invention, to accompany their petitions or specifications with a drawing or drawings of the whole, and written references, when the nature of the case admits of drawings.

DREIT. The same as Droit. (q. v.)

DRIFTWAY. A road or way over which cattle are driven. 1 Taunt. R. 279; Selw. N. P. 1037; Wool. on Ways, 1.

DRIP. The right of drip is an easementt by which the water which falls on one house is allowed to fall upon the land of another.

2. Unless the owner has acquired the right by grant or prescription, he has no right so to construct his house as to let the water drip over his neighbor's land. 1 Roll. Ab. 107. Vide Rain water; Stillicidium; and 3 Kent, Com. 436; Dig. 43, 23, 4 et 6; 11 Ad. & Ell. 40; S. C. 39 E. C. L. R. 21.

DRIVER. One employed in conducting a coach, carriage, wagon, or other vehicle, with horses, mules, or other animals.

2. Frequent accidents occur in consequence of the neglect or want of skill of drivers of public stage coaches, for which the employers are responsible.

3. The law requires that a driver should possess reasonable skill and be of good habits for the journey; if, therefore, he is not acquainted with the road he undertakes to drive; 3 Bingh. Rep. 314, 321; drives with reins so loose that he cannot govern his horses; 2 Esp. R. 533; does not give notice of any serious danger on the road; 1 Camp. R. 67; takes the wrong side of the road; 4 Esp. R. 273; incautiously comes in collision with another carriage; 1 Stark. R. 423; 1 Campb. R. 167; or does not exercise a sound and reasonable discretion in travelling on the road, to avoid dangers and difficulties, and any accident happens by which any passenger is injured, both the

driver and his employers will be responsible. 2 Stark. R. 37; 3 Engl. C. L. Rep. 233; 2 Esp. R. 533; 11. Mass. 57; 6 T. R. 659; 1 East, R. 106; 4 B. & A. 590; 6 Eng. C. L. R. 528; 2 Mc Lean, R. 157. Vide Common carriers Negligence; Quasi Offence.

DROIT. A French word, which, in that language, signifies the whole collection of laws, written and unwritten, and is synonymous to our word law. It also signifies a right, il n'existe point de droits sans devoirs, et vice versa. 1 Toull. n. 96; Poth. h. t. With us it means right, jus. Co. Litt. 158. A person was said to have droit droit, plurimum juris, and plurimum possessionis, when he had the freehold, the fee, and the property in him. Id. 266; Crabb's H. Eng. L. 400.

DROIT D'ACCESSION, French civil law. Specificatio. That property which is acquired by making a new species out of the material of another. Modus acquirendi quo quis ex aliena materia suo nomine novam speciem faciens bona fide ejus speciei dominium consequitur. It is a rule of the civil law, that if the thing can be reduced to the former matter, it belongs to the owner of the matter, e. g. a statue made of gold, but if it cannot so be reduced, it belongs to the person who made it, e. g. a statue made of marble. This subject is treated of in the Code Civil de Napoleon, art. 565 to 577; Merlin Repertoire de Surisp. Accession; Malleville's Discussion, art. 565. The Code Napoleon follows. closely the Inst. of Just. lib . 2, tit. 1, __25, 28.

2. Doddridge, in his English Lawyer, 125−6, states the common law thus: " If a man take, wrongfully, the material which was mine and is permanent, not adding anything thereunto than the form, only by alteration thereof, such thing, so newly formed by an exterior form, notwithstanding, still remaineth mine, and may be seized again by me, and I may take it out of his possession as mine own. But they say, if he add some other matter thereunto; as, of another man's leather doth make shoes or boots, or of my cloth, maketh garments, adding to the accomplishment thereof of his own, he hath thereby altered the property, so that the first owner cannot seize the thing so composed, but is driven to his action to recover his remedy: howheit, he adds, in a case of that nature depending, the court had determined that the first owner might seize the same, notwithstanding such addition. But if the thing be transitory in its nature by the change, as if one take ray corn or meal, and thereof make bread, I cannot, in that case, seize the bread, because, as the civil law speaketh, haec species facta ex materia aliens, in pristinam formam reduci non potest, ergo ei a quo est facta cedit. So some have said, if a man take my barley, and thereof make malt, because it is changed into another nature, it cannot be seized by me; but the rule is: That where the material wrongfully taken away, could not at first, before any alteration, be seized; for that it could not be distinguished. from other things of that kind, as corn, money, and such like; there those things cannot be seized because the property of those things cannot be: distinguished: for, if my money be wrongfully taken away, and he that taketh it do make plate; thereof, or do convert my plate into money, I cannot seize the same for that money is undistinguishable from other money of that coin. But, if a butcher take wrongfully my ox and doth kill it, and bring it into the market to be sold, I may not seize upon the flesh, for it: cannot be known from others of that, kind; but if it be found hanging in the skin, where the mark may appear, I may seize the same, although when it was taken from me it had life, and now is dead. So, if a man cut down my tree, and square it into a beam of timber, I may seize the same, for he bath neither altered the nature thereof, nor added anything but exterior form thereunto; but if he lay the beam of timber into the building of a house, I may not seize the same, for being so set it is become parcel of the house, and so in supposition of law, after a sort, altered in its nature. See Year Book 12 H. VIII. 9 b, 10 a; Bro. Ab. Property, 45; 5 H. VII. 15; Bro. Ab. Property, 23.

DROITS OF ADMIRALTY. Rights claimed by the government over the property of an enemy. In England, it has been usual, in maritime wars, for the government to seize and condemn, as droits of admiralty, the property of an enemy found in her ports at the breaking out of hostilities. 1 Rob. R. 196; 13 Ves. jr. 71; Edw. R. 60; 3 B. & P. 191.

DROIT D'AUBAINE, jus albinatus. This was a rule by which all the property of a deceased foreigner, whether movable or immovable, was confiscated to the use of the state, to the exclusion of his heirs, whether claiming ab intestato, or under a will of the deceased. The word aubain signifies hospes loci, peregrinus advena, a stranger. It is derived, according to some, from alibi, elsewhere, natus, born, from which the word albinus is said to be formed. Others, as Cujas, derive the word directly from advena, by which word, aubains, or strangers, are designated in the capitularies of Charlemagne. See Du Cange and Dictionaire de Trevoux.

2. As the darkness of the middle ages wore away, and the light of civilization appeared, thing barbarous and inhospitable usage was by degrees discontinued, and is now nearly abolished in the civilized world. It subsisted in France, however, in full force until 1791, and afterwards, in a modified form, until 1819, when it was formally

abolished by law. For the gross abuses of this feudal exaction, see Dictionaire de l'Ancien Regime et des abus feodaux. Aubain. See Albinatus jus.

DROIT−CLOSE. The name of an ancient writ directed to the lord of ancient demesne, and which lies for those tenants in ancient demesne who hold their lands and tenements by charter in fee simple, in fee tail, for life, or in dower. F. N. B. 23.

DROITURAL. What belongs of right; relating to right; as, real actions are either droitural or possessory; droitural, when the plaintiff seeks to recover the property. Finch's Law, 257.

DRUNKENNESS. Intoxication with strong liquor.

2. This is an offence generally punished by local regulations, more or less severely.

3. Although drunkenness reduces a man to a temporary insanity, it does not excuse him or palliate his offence, when he commits a crime during a fit of intoxication, and which is the immediate result of it. When the act is a remote consequence, superinduced by the antecedent drunkenness of the party, as in cases of delirium tremens or mania a potu, the insanity excuses the act. 5 Mison's R. 28; Amer. Jurist, vol. 3, p. 5−20; Martin and Yeager's. R. 133, 147;. Dane's Ab. Index, h. t.; 1 Russ. on Cr. 7; Ayliffe's Parerg. 231 4 Bl. Com. 26.

4. As there must be a will and intention in order to make a contract, it follows, that a man who is in such a state of intoxication as not to know what he is doing, may avoid a contract entered into by him while in this state. 2 Aik. Rep. 167; 1 Green, R. 233; 2 Verm. 97; 1 Bibb, 168; 3 Hayw. R. 82; 1 Hill, R. 313; 1 South. R. 361; Bull. N. P. 172; 1 Ves. 19; 18 Ves. 15; 3 P. Wms. 130, n. a; Sugd. Vend. 154; 1 Stark. 126; 1 South. R. 361; 2 Hayw. 394; but see 1 Bibb, R. 406; Ray's Med. Jur. ch. 23, 24; Fonbl. Eq. B. 2, 3; 22 Am. Jur. 290; 1 Fodere, Med. Leg. _215. Vide Ebriosity; Habitua. drunkard.

DRY. Used figuratively, it signifies that which produces nothing; as, dry exchange; dry rent; rent seek.

DRY EXCHANGE, contracts. A term invented for disguising and covering usury; in which something, was pretended to pass on both sides, when in truth nothing passed on one side, whence it was called dry. Stat. 3 Hen. VII. c. 5 Wolff, Ins. Nat. _657.

DRY RENT, contracts. Rent−seek, was a rent reserved without a clause of distress.

DUCAT. The name of a foreign coin. The ducat of Naples shall be estimated in the computations of customs, at eighteen cents. Act of May 22, 1846.

DUCES TECUM, practice, evidence. Bring with thee. A writ commonly called a subpoena duces tecum, commanding the person to whom it is directed to bring with him some writings, papers, or other things therein specified and described, before the court. 1 Phil. Ev. 886.

2. In general all papers in the possession of the witness must be produced; but to this general rule there are exceptions, among which are the following: 1. That a party is not bound to exhibit his own title deeds. 1 Stark. Ev. 87; 8 C. & P. 591; 2 Stark. R. 203; 9 B. & Cr. 288. 2. One who has advanced money on a lease, and holds it as his security, is not bound to produce it. 6 C. & P. 728. 3. Attorneys and solicitors who hold the papers of their clients cannot be compelled to produce them, unless the client could have been so compelled. 6 Carr. & P. 728. See 5 Cowen, R. 153, 419; Esp. R. 405; 11 Price, R. 455; 1 Adol. & Ell. 31; 1 C. M. & R. 38 1 Hud. & Brooke, 749. On the question how far this clause is obligatory on a witness, see 1 Dixon on Tit. Deeds, 98, 99, 102; 1 Esp. N. P. Cas. 405; 4 Esp. N. P. C. 43; 9 East, Rep. 473.

DUCKING−STOOL, punishment. An instrument used, in dipping women in the water, as a punishment, on conviction of being common scolds. It is sometimes confounded with tumbrel. (q. v.)

2. This barbarous punishment was never in use in Pennsylvania. 12 Serg. & Rawle, 220.

DUCROIRE. This is a French word, which has the same meaning as the Italian phrase del credere. (q. v.) 2 Pard. Dr. Com. n. 564.

DUE. What ought to be paid; what may be demanded. It differs from owing in this, that, sometimes, what is owing is not due; a note, payable thirty days after date, is owing immediately after it is delivered to the payee, but it is not due until the thirty days have elapsed.

2. Bills of exchange, and promissory notes, are not, due until the end of the three days of grace, (q. v.) unless the last of these days happen to fall on a Sunday, or other holyday, when it becomes due on the Saturday before, and not on the Monday following. Story, P. N. _440; 1 Bell's Com. 410 Story on Bills, _283; 2 Hill, N. Y. R. 587; 2 Applet. R. 264.

3. Due also signifies just or proper; as, a due presentment, and demand of payraent, must be made. See 4 Rawle, 307; 3 Leigh, 389; 3 Cranch, 300.

DUE−BILL. An acknowledgment of a debt, in writing, is so called. This instrument differs from a promissory note in many particulars; it is not payable to order, nor is it assignable by mere endorsement. See I 0 U; Promissory notes.

DUELLING, crim. law. The fighting of two persons, one against the other, at an appointed time and place, upon a precedent quarrel. It differs from an array in this, that the latter occurs on a sudden quarrel, while the former is always the result of design.

2. When one of the parties is killed, the survivor is guilty of murder. 1 Russ. on Cr. 443; 1 Yerger's R. 228. Fighting a duel, even where there is no fatal result, is, of itself, a misdemeanor. Vide 2 Com. Dig. 252; Roscoe's Cr. Ev. 610; 2 Chit. Cr. Law, 728; Id. 848; Com. Dig. Battel, B; 3 Inst. 157; 6 East, 464 Hawk. B. 1, c. 31, s. 21; 3 East, R. 581 3 Bulst. 171 4 Bl. Com. 199 Prin. Pen. Law, c. 19, p 245; Const. R. 107; 1 Stew. R. 506; 20 John. 457; 3 Cowen, 686. For cases of mutual combat, upon a sudden quarrel, Vide 1 Russ. on Cr. 495.

DUKE. The title given to those who are in the highest rank of nobility in England.

DUM FUIT INFRA AETATEM. The name of a writ which lies when an infant has made a feoffment in fee of his lands, or for life, of a gift in tail.

2. It may be sued out by him after he comes of full age, and not before; but, in the mean time, he may enter, and his entry remits him to his ancestor's rights. F. N. B. 192; Co. Litt. 247, 337.

DUM SOLA. While single or unmarried. This phrase is applied to single women, to denote that something has been done, or may be done, while the woman is or was unmarried. Example, when a judgment is rendered against a woman dum sola, and afterwards she marries, the scire facias to revive, the judgment must be against both hushand and wife.

DUM NON FUIT COMPOS MENTIS, Eng. law. The name of a writ, which the heirs of a person who was non compos mentis, and who aliened his lands, might have sued out, to restore him to his rights. T. L.

DUMB. One who cannot speak; a person who is mute. See Deaf and dumb, Deaf, dumb, and blind; Mute, standing mute.

DUMB−BIDDING, contracts. In sales at auction, when the amount which the owner of the thing sold is willing to take for the article, is written, and placed by the owner under a candlestick, or other thing, and it is agreed that no bidding shall avail unless equal to that; this is called dumbidding. Babingt. on Auct. 44.

DUNG. Manure. Sometimes it is real estate, and at other times personal property. When collected in a heap, it is personal estate; when spread out−on the land, it becomes incorporated in it, and it is then real estate. Vide Manure.

DUNGEON. A cell under ground; a place in a prison built under ground, dark, or but indifferently lighted. In the prisons of the United States, there are few or no dungeons.

DUNNAGE, mer. law. Pieces of wood placed against the sides and bottom of the hold of a vessel, to preserve the cargo from the effect of leakage, according to its nature and quality. 2 Magens, 101, art. 125, 126 Abbott on Shipp. 227.

DUPEX QUERELA, Eng. eccl. law. A complaint in the nature of an appeal from the ordinary to his next immediate superior. 3 Bl. Com 247.

DUPLICATA. It is the double of letters patent, letters of administration, or other instrument.

DUPLICATE. The double of anything.

2. It is usually applied to agreements, letters, receipts, and the like, when two originals are made of either of them. Each copy has the same effect. The term duplicate means a document, which is essentially the same as some other instrument. 7 Mann. & Gr. 93. In the English law, it also signifies the certificate of discharge given to an insolvent debtor, who takes the benefit of the act for the relief of insolvent debtors.

3. A duplicate writing has but one effect. Each duplicate is complete evidence of the intention of the parties. When a duplicate is destroyed, for example, in the case of a will, it is presumed. both are intended to be destroyed; but this presumption possesses greater or less force) owing to circumstances. When only one of the duplicates is in the possession of the testator, the destruction of that is a strong presumption of an intent to revoke both; but if he possessed both, and destroys but one, it is weaker; when he alters one, and afterwards destroys it , retaining the other entire, it has been held that the intention was to revoke both. 1 P. Wms. 346; 13 Ves. 310 but that seems to be doubted. 3 Hagg. Eccl. R. 548.

DUPLICATUM JUS, a twofold or double right. Those words, according to Bracton, lib. 4, c. 3, signify the same as dreit dreit, or droit droit, and are applied to a writ of right, patent, and such other writs of right as are of the

same nature, and do, as it were, flow from it, as the writ of right. Booth on Real Actions, 87.

DUPLICITY, pleading. Duplicity of pleading consists in multiplicity of distinct matter to one and the same thing, whereunto several answers are required. Duplicity may occur in one and the same pleading. Double pleading consists in alleging, for one single purpose or object, two or more distinct grounds of defence, when one of them would be as effectual in law, as both or all.

2. This the common law does not allow, because it produces useless prolixity, and always tends to confusion, and to the multiplication of issues. Co. Litt. 304, a; Finch's Law, 393.; 3 Bl. Com. 311; Bac. Ab. Pleas, K 1.

3. Duplicity may be in the declaration, or the subsequent proceedings: Duplicity in the declaration consists in joining, in one and the same count, different grounds of action, of different natures, Cro. Car. 20; or of the same nature, 2 Co. 4 a; 1 Saund. 58, n. 1; 2 Ventr. 198; Steph. Pl. 266; to enforce only a single right of recovery.

4. This is a fault in pleading, only because it tends to useless prolixity and confusion, and is, therefore, only a fault in form. The rule forbidding double pleading "extends," according to Lord Coke, "to pleas perpetual or peremptory, and not to pleas dilatory; for in their time and place a man may use divers of them." Co. Litt. 304, a. But by this is not meant that any dilatory plea way be double, or, in other words, that it way consist of different matters, or answers to one and the same thing; but merely that, as there are several kinds or classes of dilatory pleas, having distinct offices or effects, a defendant may use "divers of them" successively, (each being in itself single,) in their proper order. Steph. Pl. App. note 56.

5. The inconveniences which were felt in consequence of this strictness were remedied by the statute, 4 Ann. c. 16, s. 4, which provides, that " it shall be lawful for any defendant, or tenant, in any action or suit, or for any plaintiff in replevin, in any court of record, with leave of the court to plead as many several matters thereto as he shall think necessary for his defence."

6. This provision, or a similar one, is in force, probably, in most of the states of the American Union.

7. Under this statute, the defendant may, with leave of court, plead as many different pleas in bar, (each being a single,) as he may think proper; but although this statute allows the defendant to plead several distinct and substantive matters of defence, in several distinct pleas, to the whole, or one and the same part of the plaintiff's demand; yet, it does not authorize him to allege more than one, ground of defence in one plea. Each plea must still be single, as by the rules of the common law. Lawes, Pl. 131; 1 Chit. Pl. 512.

8. This statute extends only to pleas to the declaration, and does not embrace replications, rejoinders, nor any of the subsequent pleadings. Lawes, Pl. 132; 2 chit. Pl. 421; Com. Dig. Pleader, E 2; Story's Pl. 72, 76; 5 Am. Jur. 260−288. Vide) generally, 1 Chit. Pl. 230, 512; Steph. Pl. c. 2, s. 3, rule 1; Gould on Pl. c. 8, p. 1; Archb. Civ. Pl. 191; Doct. Pl. 222; 5 John. 240; 8 Vin. Ab. 183; U. S. Dig. Pleading, II. e and f.

DURANTE. A term equivalent to during, which is used in some law phrases, as durante absentia, during absence; durante minor cetate, during minority; durante bene placito, during our good pleasure.

DURANTE ABSENTIA. When the executor is out of the jurisdiction of the court or officer to whom belongs the probate of wills and granting letters of administration, letters of administration will be granted to another during the absence of the executor; and the person thus appointed is called the administrator durante absentia.

DURANTE MINORE AETATE. During the minority.

2. During his minority, an infant can enter into no contract, except those for his benefit. If he should be appointed an executor, administration of the estate will be granted, durante minore &,tate, to another person. 2 Bouv. Inst. n. 1555.

DURESS. An actual or a threatened violence or restraint of a man's person, contrary to law, to compel him to enter into a contract, or to discharge one. 1 Fairf. 325.

2. Sir William Blackstone divides duress into two sorts: First. Duress of imprisonment, where a man actually loses his liberty. If a man be illegally deprived of his liberty until he sign and seal a bond, or the like, he may allege this duress, and avoid the bond. But, if a man be legally imprisoned, and either to procure his discharge, or on any other fair account, seal a bond or a deed, this is not by duress of imprisonment, and he is not at liberty to avoid it. 2 Inst. 482; 3 Caines' R. 168; 6 Mass. R. 511; 1 Lev. 69; 1 Hen. & Munf. 350; 5 Shepl. R. 338. Where the proceedings at, law are a mere pretext, the instrument may be avoided. Aleyn, 92; 1 Bl. Com. 136.

3. Second. Duress per minas, which is either for fear of loss of life, or else for fear of mayhem, or loss of limb,; and this must be upon a sufficient reason. 1 Bl. Com. 131. In this case, a man way avoid his own act. Id. Lord Coke enumerates four instances in which a man may avoid his own act by reason of menaces: 1st. For fear of loss of life. 2d. Of member. 3d. Of mayhem. 4th. Of imprisonment. 2 Inst. 483; 2 Roll. Abr. 124 Bac. Ab. Duress; Id.

Murder, A; 2 Str. R. 856 Fost. Cr. Law, 322; 2 St. R. 884 2 Ld. Raym. 1578; Sav. Dr. Rom. _114.

4. In South Carolina, duress of goods, under circumstances of great hardship, will avoid a contract. 2 Bay R. 211 Bay, R. 470. But see Hardin, R. 605; 2 Gallis. R. 337.

5. In Louisiana consent to a contract is void if it be produced by violence or threats, and the contract is invalid. Civ. Code of Louis. art. 1844.

6. It is not every degree of violence or any hind of threats, that will invalidate a contract; they must be such as would naturally operate on a person of ordinary firmness, and inspire a just fear of great injury to person, reputation or fortune. The age, sex, state of health; temper and disposition of the party, and 0ther circumstances calculated to give greater or less effect to the violence or threats, must be taken into consideration. Id. art. 1845. The author of Fleta states the rule of the ancient common law thus: "Est autem metus praesentis vel futuri periculi causa mentis trepidatio; est praesertim viri constantis et non cujuslibet vani hominis vel meticulosi et talis debet esse metus qui in se contineat, mortis periculum, vel corporis cruciatura."

7. A contract by violence or threats, is void, although the party in whose favor the contract is made, and not exercise the violence or make the threats, and although he were ignorant of them. Id. 1846.

8. Violence or threats are cause of nullity, not only where they are exercised on the contracting party, but when the wife, the hushand, the descendants or ascendants of the party are the object of them. Id. 1847. Fleta adds on this subject: "et exceptionem habet si sibi ipsi inferatur vis et metus verumetiam si vis ut filio vel filiae, patri vel fratri, vel sorori et ahis domesticis et propinquis."

9. If the violence used be only a legal constraint, or the threats only of doing that which the party using them had a right to do, they shall not invalidate the contract A just and legal imprisonment, or threats of any measure authorized by law, and the circumstances of the case, are of this description. Id. 1850. See Norris Peake's Evid. 440, and the cases cited also, 6 Mass. Rep. 506, for the general rule at common law.

10. But the mere forms of law to cover coercive proceedings for an unjust and illegal cause, if used or threatened in order to procure the assent to a contract, will invalidate it; an arrest without cause of action, or a demand of bail in an unreasonable sum, or threat of such proceeding, by this rule invalidate a contract made under their pressure. Id. 1851.

11. All the above, articles relate to cases where there may be some other motive besides the violence or threats for making the contract. When, however, there is no other cause for making the contract, any threats, even of slight injury, will invalidate it. Id. 1853. Vide, generally, 2 Watts, 167; 1 Bailey, 84; 6 Mass. 511; 6 N. H. Rep. 508; 2 Gallis. R. 337.

DUTIES. In its most enlarged sense, this word is nearly equivalent to taxes, embracing all impositions or charges levied on persons or things; in its more restrained sense, it is often used as equivalent to customs, (q. v.) or imposts. (q. v.) Story, Const. _949. Vide, for the rate of duties payable on goods and merchandise, Gord. Dig. B. 7, t. 1, c. 1; Story's L. U. S. Index, h. t.

DUTY, natural law. A human action which is, exactly conformable to the laws which require us to obey them.

2. It differs from a legal obligation, because a duty cannot always be enforeed by the law; it is our duty, for example, to be temperate in eating, but we are under no legal obligation to be so; we ought to love our neighbors, but no law obliges us to love them.

3. Duties may be considered in the relation of man towards God, towards himself, and towards mankind. 1. We are bound to obey the will of God as far as we are able to discover it, because he is the sovereign Lord of the universe who made and governs all things by his almighty power, and infinite wisdom. The general name of this duty is piety: which consists in entertaining just opinions concerning him, and partly in such affections towards him, and such, worship of him, as is suitable to these opinions.

4. − 2. A man has a duty to perform towards himself; he is bound by the law of nature to protect his life and his limbs; it is his duty, too, to avoid all intemperance in eating and drinking, and in the unlawful gratification of all his other appetites.

5. − 3. He has duties to perform towards others. He is bound to do to others the same justice which he would have a right to expect them to do to him.

DWELLING: HOUSE. A building inhabited by man. A mansion. (q. v.)

2. A part of a house is, in one sense, a dwelling house; for example, where two or more persons rent of the owner different parts of a house, so as to have among them the whole house, and the owner does not reserve or occupy any part, the separate portion of each will, in cases of burglary, be considered the dwelling house of each. 1 Mood.

Cr. bas. 23.

3. At common law, in cases of burglary, under the term dwelling house are included the out−houses within the curtilage or common fence with the dwelling house. 3 Inst. 64; 4 Bl. Com. 225; and vide Russ & Ry. Cr. Cas. 170; Id. 186; 16 Mass. 105; 16 John. 203; 18 John. 115; 4 Call, 109; 1 Moody, Cr. Cas. 274; Burglary; Door; House; Jail; Mansion.

DYING DECLARATIONS. When a man has received a mortal wound or other injury, by which he is in imminent danger of dying, and believes that he must die, and afterwards does die, the statements he makes as to the manner in which he received such injury, and the person who committed it, are called his dying declarations.

2. These declarations are received in evidence against the person thus accused, on the ground that the party making them can have no motive but to tell the truth. The following lines have been put into the mouth of such a man:

> Have I not hideous Death before my view,
> Retaining but a quantity of life,
> Which bleeds away, even as a form of wax
> Resolveth from his figure ’gainst the fire ?
> What in the world should make me now deceive,
> Since I must lose the use of all deceit?
> Why then should I be false, since it is true
> That I must die here, and live hence by truth.

See Death; Deathbed or dying declarations; Declarations.

DYNASTY. A succession of kings in the same line or family; government; sovereignty.

DYSNOMY. Bad legislation; the enactment of bad laws.

DYSPEPSIA, med. jur., contracts. A state of the stomach in which its functions are disturbed, without the presence of other diseases; or when, if other diseases are present, they are of minor importance. Dunglison’s Med. Dict. h. t.

2. Dyspepsia is not, in general, considered as a disease which tends to shorten life, so as to make a life uninsurable; unless the complaint has become organic dyspepsia, or was of such a degree at the time of the insurance, as, by its excess, to tend to shorten life. 4 Taunt. 763.

DYVOUR, Scotch law. A bankrupt.

DYVOUR’S HABIT. Scotch law. A habit which debtors, who are set free on a cessio bonorum, are obliged to wear, unless in the summons and process of cessio, it be libelled, sustained, and proved that the bankruptcy proceeds from misfortune. And bankrupts are condemned to submit to the habit, even where no suspicion of fraud lies against them, if they have been dealers in an illicit trade. Ersk. Pr. L. Scot. 4, 3, 13. This practice was bottomed on that of the Roman civil law, which Filangierl says is better fitted to excite laughter than compassion. He adds: " Si conduce il debitore vicino ad una colonna a quest officio destinata, egli l’abbraccia nel mentre, che uno araldo grida Cedo bonis ed un al tro gli abza le vesti, e palesa agli spettatori le sue natiche. Finita questa ceremonia il debitore messo in liberta." Filangieri della legislazione, cap. iv.