UBERRIMA FIDES. Perfect good faith; abundant good faith.

2. This phrase is used to express that a contract must be made in perfect good faith, concealing nothing; as in the case of insurance, the insured must observe the most perfect good faith towards the insurer. 1 Story, Eq. Jur. _317; 3 Kent, Com. 283, 4th ed.

UKAAS, or UKASE. The name of a law or ordinance emanating from the czar of Russia.

ULLAGE, com. law. When a cask is gauged, what it wants of being full is called ullage.

ULTIMATUM. The last proposition made in making a contract, a treaty, and the like; as, the government of the United States has given its ultimatum, has made the last proposition it will make to complete the proposed treaty. The word also means the result of a negotiation, and it comprises the final determination of the parties concerned in the object in dispute.

ULTIMUM SUPPLICIUM. The last or extreme punishment; the penalty of death.

ULTIMUS HAERES. The last or remote heir; the lord. So called in contra−dis−tinction to the haeredes proximus, (q. v.) and the haeredes remotiores. (q. v.) Dalr Feud. Pr. 110.

UMPIRAGE. The decision of an umpire. This word is used for the judgment of an umpire, as the word award is employed to designate that of arbitrators.

UMPIRE. A person selected by two or more arbitrators. When they are authorize to do so by the submission of the parties, and they cannot agree as to the subject−matter referred to them, whose duty it is to decide the matter in dispute. Sometimes the term is applied to a single arbitrator, selected by the parties themselves. Kyd on Awards, 6, 75, 77 Caldw. on Arb. 38; Dane's Ab. Index, h. t.; 3 Vin. Ab. 93; Com. Dig. Arbitrament, F; 4 Dall. 271, 432; 4 Sco. N. S. 378; Bouv. Inst. Index, h. t.

UNA VOCE. With one voice unanimously.

UNALIENABLE. The state of a thing or right which cannot be sold.

2. Things which are not in commerce, as public roads, are in their nature unalienable. Some things are unalienable, in consequence of particular provisions in the law forbidding their sale or transfer, as pensions granted by the government. The natural rights of life and liberty are unalienable.

UNANIMITY. The agreement of all the persons concerned in a thing in design and opinion.

2. Generally a simple majority (q. v.) of any number of persons is sufficient to do such acts as the whole number can do; for example, a majority of the legislature can pass a law: but there are some cases in which unanimity is required; for example, a traverse jury, composed of twelve individuals, cannot decide an issue submitted to them, unless they are unanimous.

UNCERTAINTY. That which is unknown or vague. Vide Certainty.

UNCONDITIONAL. That which is without condition; that which must be performed without regard to what has happened or may happen.

UNCONDITIONAL CONTRACT, contracts. One which does not depend upon any condition whatever. 1 Bouv. Inst. n. 730.

UNCONSCIONABLE BARGAIN, contracts. A contract which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept, on the other. 4 Bouv. Inst. n. 3848.

UNCONSTITUTIONAL. That which is contrary to the constitution.

2. When an act of the legislature is repugnant or contrary to the constitution, it is, ipso facto, void. 2 Pet. R. 522; 12 Wheat. 270; 3 Dall. 286; 4 Dall. 18.

3. The courts have the power, and it is their duty, when an act is unconstitutional, to declare it to be so; but this will not be done except in a clear case and, as an additional guard against error, the supreme court of the United States refuses to take up a case involving constitutional questions, when the court is not full. 9 Pet. 85. Vide 6 Cranch, 128; 1 Binn. 419; 5 Binn. 355; 2 Penns 184; 3 S. & R. 169; 7 Pick. 466; 13 Pick. 60; 2 Yeates, 493; 1 Virg. Cas. 20; 1 Blackf. 206 6 Rand. 245 1 Murph. 58; Harper, 385 1 Breese, 209 Pr. Dee. 64, 89; 1 Rep. Cons. Ct. 267 1 Car. Law Repos. 246 4 Munr. 43; 5 Hayw. 271; 1 Cowen, 550; 1 South. 192; 2 South. 466; 7 N H. Rep. 65, 66; 1 Chip, 237, 257; 10 Conn. 522; 7 Gill & John. 7; 2 Litt. 90; 3 Desaus. 476.

UNCORE PRIT, pleading. This barbarous phrase of old French, which is the same with encore pret, yet ready, is used in a plea in bar to an action of debt on a bond due at a day past; when the defendant pleads a tender on the day it became due, and adds that he is uncore prit, still ready to pay the same. 3 Bl. Com. 303; Doct. Pl. 526 Dane's Ab. Index, h. t. Vide tout temps prist.

UNDE NIHIL HABET. Of which she has nothing. When no dower had been assigned to the widow during the time prescribed by law, she could, at common law, sue out a writ of dower unde nihil habet. 3 Bl. Com. 183.

UNDERLEASE, contracts. An alienation by a tenant of a part of his lease, reserving to himself a reversion; it differs from an assignment, which is a transfer of all the tenant's interest in the lease. 3 Wils. 234; S. C. Bl. Rep. 766. And even a conveyance of the whole estate by the lessee, reserving to himself the rent, with a power of re−entry for non−payment, was held to be, not an assignment, but an underlease. Str. 405. In Ohio it has been decided that the transfer of only a part of the lands, though for the whole term, is an underlease; 2 Ohio, R. 216; in Kentucky, such a transfer, on the contrary, is considered as an assignment. 4 Bibb. R. 538.

2. In leases there is frequently introduced a covenant on the part of the lessee, that he will not underlet the premises, nor assign the lease. This refers to the voluntary act of the tenant, and the covenant is not broken when the lease is transferred without any act on his part; as, if it be sold by the sheriff on execution, or by assignees in bankruptcy, or by an executor. 8 T. R. 57; 3 M. & S. 353; 1 Ves. 295.

3. The underlessor has a right to distrain for the rent due to him, which, the assignor of a lease has not. The under−lessee is not liable personally to the original lessor, nor is his property subject to his claim for rent longer than while it is on the leased premises, when it may be distrained upon. The assignee of the lessee stands in a different situation. He is liable to an action by the landlord or his assignee for the rent, upon the ground of privity of estate. 1 Hill. Ab. 125, 6; 4 Kent, Com. 95; 9 Pick. R. 52; 14 Mass. 487; 5 Watts, R. 134. Vide 2 Bl. R. 766; 3 Wils. 234; 4 Campb. 73; Bouv. Inst. Index, tit. Underletting. Vide Estate for years; Lease; Lessee; Notice to quit; Tenant for years.

UNDER−SHERIFF. A deputy of a sheriff. The principal is called high−sheriff, and the deputy the under−sheriff. Vide 1 Phil . Ev. Index, h. t.

UNDER−TENANT. One who holds by virtue of an underlease. (q. v.) See Subtenant.

UNDERTAKING, contracts. An engagement by one of the parties to a contract to the other, and not the mutual engagement of the parties to each other; a promise. 5 East, R. 17; 2 Leon. 224, 5; 4 B, & A. 595.

UNDERTOOK. Assumed; promised.

2. This is a technical word which ought to be inserted in every declaration of assumpsit, charging that the defendant undertook to perform the promise which is the foundation of the suit; and this though the promise be founded on a legal liability, or would be implied in evidence. Bac. Ab Assumpsit, F; 1 Chit. Pl. 88, note p.

UNDER−TUTOR, law of Louisiana. In every tutorship, there shall be an undertutor, whom it shall be the duty of the judge to appoint at the time letters of tutorship are certified for the tutor.

2. It is the duty of the under−tutor to act for the minor, whenever the interest of the minor is in opposition to the interest of the tutor. Civil Code, art. 300, 301; 1 N. S. 462; 9 M. R. 643; 11 L. R. 189; Poth. Des Personnes, partie prem. tit. 6, s. 5, art. 2. Vide Pro−curator; Protutor.

UNDERWRITER, insurances. One who signs a policy of insurance, by which he becomes an insurer.

2. By this act he places himself as to his responsibility, in the place of the insured. He may cause a re−insurance (q. v.) to be made for his benefit; and it is his duty to act with good faith, and, without quibbling, to pay all just demands against him for losses. Marsh. Ins. 45,

UNDIVIDED. That which is held by the same title by two or more persons, whether their rights are equal, as to value or quantity, or unequal.

2. Tenants in common, joint−tenants, and partners, hold an undivided right in their respective properties, until partition has been made. The rights of each owner of an undivided thing extends over the whole and every part of it, totum in toto, et totum in qualibet parte. Vide Partition; Per my et per tout.

UNICA TAXATIO, practice. The ancient language of a special award of venire, where of several defendants, one pleads, and one lets judgment go by default, whereby the jury, who are to try and assess damages on the issue, are also to assess damages against the defendant suffering judgment by default. Lee's Dict. h. t.

UNILATERAL CONTRACT, civil law. When the party to whom an engagement is made, makes no express agreement on his part, the contract is called uni−lateral, even in cases where the law attaches certain obligations to his acceptance. Civ. Code of Lo. art. 1758. Code Nap. 1103. A loan of money, and a loan for use, are of this kind. Poth. Obl. part 1, c. 1, s. 1, art. 2; Lee. Elemen. _781.

UNINTELLIGIBLE. That which cannot be understood.

2. When a law, a contract, or will, is unintelligible, it has no effect whatever. Vide Construction, and the authorities there referred to.

UNIO PROLIUM. A species of adoption used among the Germans; it signifies union of descent. It takes place when a widower, having children, marries a widow, who also has children. These parents then agree that the children of both marriages shall have the rights to their succession, as those which may be the fruits of their marriage. Lec. Elem. _187.

UNION. By this word is understood the United States of America; as, all good citizens will support the Union.

UNITED STATES OF AMERICA. The name of this country. The United States, now thirty−one in number, are Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Wisconsin, and California.

2. The territory of which these states are composed was at one time dependent generally on the crown of Great Britain, though governed by the local legislatures of the country. It is not within the plan of this work to give a history of the colonies; on this subject the reader is referred to Kent's Com. sect. 10; Story on the Constitution, Book 1; 8 Wheat. Rep. 543; Marshall, Hist. Colon.

3. The neglect of the British government to redress grievances which had been felt by the people, induced the colonies to form a closer connexion than their former isolated state, in the hopes that by a union they might procure what they had separately endeavored in vain, to obtain. In 1774, Massachusetts recommended that a congress of the colonies should be assembled to deliberate upon the state of public affairs; and on the fourth of September of the following year, the delegates to such a congress assembled in Philadelphia. Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia, were represented by their delegates; Georgia alone was not represented. This congress, thus organized, exercised de facto and de jure, a sovereign authority, not as the delegated agents of the governments de facto of the colonies, but in virtue of the original powers derived from the people. This, which was called the revolutionary government, terminated only when superseded by the confederated government under the articles of confederation, ratified in 1781. Serg. on the Const. Intr. 7, 8.

4. The state of alarm and danger in which the colonies then stood induced the formation of a second congress. The delegates, representing all the states, met in May, 1775. This congress put the country in a state of defence, and made provisions for carrving on the war with the mother country; and for the internal regulations of which they were then in need; and on the fourth day of July, 1776, adopted and issued the Declaration of Independence. (q. v.) The articles of confederation, (q. v.) adopted on the first day of March, 1781, 1 Story on the Const. _225; 1 Kent's Comm. 211, continued in force until the first Wednesday in March, 1789, when the present constitution was adopted. 5 Wheat. 420.

5. The United States of America are a corporation endowed with the capacity to sue and be sued, to convey and receive property. 1 Marsh. Dec. 177, 181. But it is proper to observe that no suit can be brought against the United States without authority of law.

6. The states, individually, retain all the powers which they possessed at the formation of the constitution, and which have not been given to congress. (q. v.)

7. Besides the states which are above enumerated, there are various territories, (q. v.) which are a species of dependencies of the United States. New states may be admitted by congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of congress. Const. art. 4, s. 3. And the United States shall guaranty to every state in this union, a republican form of government. Id. art. 4, s. 4. See the names of the several states; and Constitution of the United States.

UNITY, estates. An agreement or coincidence of certain qualities in the title of a joint estate or an estate in common.

2. In a joint estate there must exist four unities; that of interest, for a joint−tenant cannot be entitled to one period of duration or quantity of interest in lands, and the other to a different; one cannot be tenant for life, and the other for years: that of title, and therefore their estate must be created by one and, the same act; that of time, for their estates must be vested at one and the same period, as well as by one and the same title; and lastly, the unity of possession: hence joint−tenants are seised per my et per tout, or by the half or moiety and by all: that is, each of them has an entire possession, as well of every parcel as of the whole. 2 Bl. Com. 179−182; Co. Litt. 188.

3. Coparceners must have the unities of interest, title, and possession.

4. In tenancies in common, the unity of possession is alone required. 2 Bl. Com. 192; 2 Bouv. Inst. n. 1861−83. Vide Estate in Common; Estate in Joint−tenancy; Joint−tenants; Tenant in Common; Tenants, Joint.

UNITY OF POSSESSION. This term is used to designate the possession by one person of several estates or rights. For example, a right to an estate to which an easement is attached, or the dominant estate, and to an estate which an easement encumbers, or the servient estate, in such case the easement is extinguished. 3 Mason, Rep. 172; Poph. 166; Latch, 153; and vide Cro. Jac. 121. But a distinction has been made between a thing that has being by prescription, and one that has its being ex jure naturae; in the former case unity of possession will extinguish the easement; in the latter, for example, the case of a water course, the unity will not extinguish it. Poth. 166.

2. By the civil code of Louisiana, art. 801, every servitude is extin−guished, when the estate to which it is due, and the estate owing it, are united in the same hands. But it is necessary that the whole of the two estates should belong to the same proprietor; for if the owner of one estate only acquires the other in part or in common with another person, confusion does not take effect. Vide Merger.

UNIVERSAL LEGACY. A term used among civilians. An universal legacy is a testamentary disposition, by which the testator gives to one or several persons the whole of the property which he leaves at his decease. Civil Code of Lo. art. 1599; Code Civ. art. 1003; Poth. Donations testamentaires, c. 2, sect. 1, _2.

UNIVERSAL PARTNERSHIP. The name of a specie's of partnership by which all the partners agree to put in common all their property, universorum bonorum, not only what they then have, but also what they shall acquire. Poth. Du Contr. de Societe, n. 29.

2. In Louisiana, universal partnerships are allowed, but properly which may accrue to one of the parties, after entering into the partnership, by donation, succession, or legacy, does not become common stock, and any stipulation to that effect, previous to the obtaining the property aforesaid, is void. Civ. Code, art. 2800.

UNIVERSITY. The name given to certain societies or corporations which are seminaries of learning where youth are sent to finish their education. Among the civilians by this term is understood a corporation.

UNJUST. That which is done against the perfect rights of another; that which is against the established law; that which is opposed to a law which is the test of right and wrong. 1 Toull. tit. prel. n. 5; Aust. Jur. 276, n.; Hein. Lec. El. _1080.

UNKNOWN. When goods have been stolen from some person unknown, they may be so described in the indictment; but if the owner be really known, an indictment alleging the property to belong to some person unknown is improper. 2 East's P. C. 651 1 Hale, P. C. 512; Holt's N. P. C. 596 S. C. 3 Engl. Common Law Rep. 191; 8 C. & P. 773. Vide Indictment; Quidam.

UNLAWFUL. That which is contrary to law.

2. There are two kinds of contracts which are unlawful; those which are void, and those which are not. When the law expressly prohibits the transaction in respect of which the agreement is entered into and declares it to be void, it is absolutely so. 3 Binn. R. 533. But when it is merely prohibited, without being made void, although unlawful, it is not void. 12 Serg. & Rawle, 237; Chitty, Contr. 230; 23 Amer. Jur. 1 to 23; 1 Mod. 35; 8 East, R. 236, 237; 3 Taunt. R. 244; Hob. 14. Vide Condition; Void.

UNLAWFUL ASSEMBLY, crim. law. A disturbance of the public peace by three or more persons who meet together with an intent mutually to assist each other in the execution of some unlawful enterprise of a private nature, with force and violence; if they move forward towards its execution, it is then a rout (q. v.) and if they actually execute their design, it amounts to a riot. (q. v.) 4 Bl. Com. 140; 1 Russ. on Cr. 254; Hawk. c. 65, s. 9; Com. Dig. Forcible Entry, D 10; Vin. Abr. Riots, &c., A.

UNLAWFULLY, pleadings. This word is frequently used in indictments in the description of the offence; it is necessary when the crime did not exist at common law, and when a statute, in describing an offence which it creates, uses the word, 1 Moody, Cr. Cas. 339; but it is unnecessary whenever the crime existed at common law, and is manifestly illegal. 1 Chitty, Crim. Law, *241; Hawk. B. 2, c. 95, s. 96; 2 Roll. Ab. 82; Bac. Abr. Indictment, G 1 Cro. C. C. 38, 43.

UNLIQUIDATED DAMAGES. Such damages, as are unascertained. In general such damages cannot be set−off. No interest will be allowed on unliquidated damages. 1 Bouv. Inst. n. 1108. See Liquidated, Liquidated Damages.

UNQUES, law French. Yet. This barbarous word is frequently used in pleas as, Ne unques executor, Ne unquas guardian, Ne unques accouple; and the like.

UNSOUND MIND; UNSOUND MEMORY. These words have been adopted in several statutes, and sometimes

indiscriminately used to signify, not only lunacy, which is periodical madness, but also a permanent adventitious insanity as distinguished from idiocy. 1 Ridg. Parl. Cases, 518; 3 Atk. 171.

2. The term unsound mind seems to have been used in those statutes in the same sense as insane; but they have been said to import that the party was in some such state as was contradistinguished from idiocy and from lunacy, and yet such is made him a proper subject of a commission to inquire of idiocy and lunacy. Shelf. on Lun. 5; Ray, Med. Jur. Prel. _8; Hals. Med. Jur. 336; 8 Ves. 66; 19 Ves. 286; 1 Beck's Med. Jur. 573; Coop. Ch. Cas. 108; 12 Ves. 447; 2 Mad. Ch. Pr. 731, 732.

UNSOUNDNESS. Vide Crib−biting; Roaring; Soundness.

UNWHOLESOME FOOD. Food not fit to be eaten; food which, if eaten, would be injurious.

2. Although the law does not in general consider a sale to be a warranty or goodness of the quality of a personal chattel, yet it is otherwise with regard to food and liquor when sold for consumption. 1 Roll. Ab. 90, pl. 1 and 2.

UPLIFTED HAND. When a man accused of a crime is arraigned, he is required to raise his hand, probably in order to identify the person who pleads. Perhaps for the same reason when a witness adopts a particular mode of taking an oath, as when he does not swear upon the gospel, but upon Almighty God, he is requested to hold up his hand.

URBAN. Relating to a city; but in a more general sense it signifies relating to houses.

2. It is used in this latter sense in the civil code of Louisiana, articles 706 and 707. All servitudes are established either for the use of houses or for the use of lands. Those of the first kind are called urban servitudes, whether the buildings to which they are due be situated in the city or in the country. Those of the second kind are called rural servitudes.

3. The principal kinds of urban servitudes are the following: the right of support; that of drip; that of drain, or of preventing the drain, that of view or of lights, or of preventing the view or lights from being obstructed: that of raising buildings or walls, or of preventing them from being raised that of passage and that of drawing water. Vide 3 Toull. p. 441; Poth. Introd. au tit. 13 de la Coutume d'Orleans, n. 2; Introd. Id. n. 2.

USAGE. Long and uniform practice. In its most extensive meaning this term includes custom and prescription, though it differs from them in a narrower sense, it is applied to the habits, modes, and course of dealing which are observed in trade generally, as to all mercantile transactions, or to some particular branches of trade.

2. Usage of trade does not require to be immemorial to establish it; if it be known, certain, uniform, reasonable, and not contrary to law, it is sufficient. But evidence of a few instances that such a thing has been done does not establish a usage. 3 Watts, 178; 3 Wash. C. C. R. 150; 1 Gallis. 443; 5 Binn. 287; 9 Pick. 426; 4 B. & Ald. 210; 7 Pet. 1; 2 Wash. C. C. R. 7.

3. The usages of trade afford ground upon which a proper construction may be given to contracts. By their aid the indeterminate intention of parties and the nature and extent of their contracts arising from mere implications or presumptions, and act of an equivocal character may be ascertained; and the meaning of words and doubtful expressions may become known. 2 Mete. 65; 2 Sumn. 569; 2 G. & J. 136; 13 Pick. 182; Story on Ag. _77; 2 Kent, Com. 662, 3d ed.; 5 Wheat. 326; 2 Car. & P. 525; 3 B. & Ald. 728; Park. on Ins. 30; 1 Marsh. Ins. 186, n. 20; 1 Caines, 45 Gilp. 356, 486; 1 Edw. Ch. R. 146; 1 N. & M. 519; 15 Mass. 433; 1 Rill, R. 270; Wright, R. 573; Pet. C. C. R. 230; 5 Hamm. 436 6 Pet. 715; 2 Pet. 148; 6 Porter, 123 1 Hall, 612; 9 Mass. 155; 9 Wheat. 582 11 Wheat. 430; 1 Pet. 25, 89.

4. Courts will not readily adopt these usages, because they are not unfrequently founded in mistake. 2 Sumn. 377. See 3 Chitt. Pr. 55; Story, Confl. of Laws, _270; 1 Dall. 178; Vaugh. 169, 383; Bouv. Inst. Index, h. t.

USANCE, commercial law. The term usance comes from usage, and signifies the time which by usage or custom is allowed in certain countries, for the payment of a bill of exchange. Poth. Contr. du Change, n. 15.

2. The time of one, two or three mouths after the date of the bill, according to the custom of the places between which the exchanges run.

3. Double or treble is double or treble the usual time, and half usance is half the time. Where it is necessary to divide a month upon a half usance, which is the case when the usance is for one month or three, the division, notwithstanding the difference in the length of the months, contains fifteen days.

USE, estates. A confidence reposed in another, who was made tenant of the land or terre tenant, that he should dispose of the land according to the intention of the cestui que use, or him to whose use it was granted, and suffer him to take the profits. Plowd. 352; Gilb. on Uses, 1; Bac. Tr. 150, 306; Cornish on Uses, 1 3; 1 Fonb. Eq. 363; 2 Id. 7; Sanders on Uses, 2; Co. Litt. 272, b; 1 Co. 121; 2 Bl. Com. 328; 2 Bouv. Inst. n. 1885, et seq.

2. In order to create a use, there must always be a good Consideration; though, when once raised, it may be passed by grant to a stranger, without consideration. Doct. & Stu. , Dial. ch. 22, 23; Rob. Fr. Conv. 87, n.

3. Uses were borrowed from the fidei commissum (q. v.) of the civil law; it was the duty of a Roman magistrate, the praetor fidei commissarius, whom Bacon terms the particular chancellor for uses, to enforce the observance of this confidence. Inst. 2, 23, 2.

4. Uses were introduced into England by the ecclesiastics in the reign of Edward Ill or Richard II, for the purpose of avoiding the statutes of mortmain; and the clerical chancellors of those times held them to be fidei commissa, and binding in conscience. To obviate many inconveniencies and difficulties, which had arisen out of the doctrine and introduction of uses, the statute of 274 Henry VIII, c. 10, commonly called the statute of uses, or in conveyances and pleadings, the statute for transferring uses into possession, was passed. It enacts, that "when any person shall be seised of lands, &c., to the use, confidence or trust of any other person or body politic, the person or corporation entitled to the use in fee simple, fee tail, for life, or years, or otherwise, shall from thenceforth stand and be seised or possessed of the land, &c., of and in the like estate as they have in the use, trust or confidence; and that the estates of the persons so seised to the uses, shall be deemed to be in him or them that have the use, in such quality, manner, form and condition, as they had before in the use." The statute thus executes the use; that is, it conveys the possession to the use, and transfers the use to the possession; and, in this manner, making the cestui que use complete owner of the lands and tenements, as well at law as in equity. 2 Bl. Com. 333; 1 Saund. 254, note 6.

5. A modern use has been defined to be an estate of right, which is acquired through the operation of the statute of 27 Hen. VIII., c. 10; and which, when it may take effect according to the rules of the common law, is called the legal estate; and when it may not, is denominated a use, with a term descriptive of its modification. Cornish on Uses, 35.

6. The common law judges decided, in the construction of this statute, that a use could not be raised upon a use; Dyer, 155 A; and that on a feoffment to A and his heirs, to the use of B and his heirs, in trust for C and his heirs, the statute executed only the first use, and that the second was a mere nullity. The judges also held that, as the statute mentioned only such persons as were seised to the use of others, it did not extend to a term of years, or other chattel interests, of which a termor is not seised but only possessed. Bac. Tr. 336; Poph. 76; Dyer, 369; 2 Bl. Com. 336; The rigid literal construction of the statute by the courts of law again opened the doors of the chancery courts. 1 Madd. Ch. 448, 450.

USE, civil law. A right of receiving so much of the natural profits of a thing as is necessary to daily sustenance; it differs from usufruct, which is a right not only to use but to enjoy. 1 Browne’s Civ. Law, 184; Lecons Elem. du Dr. Civ. Rom. _414, 416.

USE AND OCCUPATION. When a contract has been made, either by express or implied agreement, for the use of a house or other real estate, where there was no amount of rent fixed and ascertained, the landlord can recover a reasonable rent in an action of assumpsit for use and occupation. 1 Munf. R. 407; 2 Aik. R. 252; 7 J. J. Marsh. 6; 4 Day, R. 228; 13 John. R. 240; 13 John. R. 297; 4 H. & M. 161; 15 Mass. R. 270; 2 Whart. R. 42; 10 S. & R. 251.

2. The action for use and occupation is founded not on a privity of estate, but on a privity of contract; 3 S. & R. 500; C. & N. 19; therefore it will not lie where the possession is tortious. 2 N. & M. 156; 3 S. & R. 500; 6 N. H. Rep. 298; 6 Ham. R. 371; 14 Mass. R. 95. See Arch. L. & T. 148.

USEFUL. That which may be put into beneficial practice.

2. The patent act of congress of July 4, 1836, sect. 6, in describing the subjects of patents, mentions "new and useful art," and "new and useful improvement." To entitle the inventor to a patent, his invention must, to a certain extent, be beneficial to the community, and not be for an unlawful object, or frivolous, or insignificant. 1 Mason, 182; 1 Pet. C. C. R. 322; 1 Bald. 303; 14 Pick. 217; Paine, 203.

USHER. This word is said to be derived from a huissier, and is the name of an inferior officer in some English courts of law Archb. Pr. 25.

USUCAPTION, civil law. The manner of acquiring property in things by the lapse of time required by law.

2. It differs from prescription, which has the same sense, and means, in addition, the manner of acquiring and losing, by the effect of time regulated by law, all sorts of rights and actions. Merl. Repert. mot Prescription, tom. xii. page 671; Ayl. Pand. 320; Wood’s Inst. Civ. Law, 165; Lecons Elem. du Dr. Rom. _437; 1 Browne’s Civ. Law, 264, n.; vattel, ii. 2, c. 2, _140.

USUFRUCT, civil law. The right of enjoying a thing, the property of which is vested in another, and to draw

from the same all the profit, utility and advantage which it may produce, provided it be without altering the substance of the thing.

2. The obligation of not altering the substance of the thing, however, takes place only in the case of a complete usufruct.

3. Usufructs are of two kinds; perfect and imperfect. Perfect usufruct, which is of things which the usufructuary can enjoy without altering their substance, though their substance may be diminished or deteriorated naturally by time or by the use to which they are applied; as a house, a piece of land, animals, furniture and other movable effects. Imperfect or quasi usufruct, which is of things which would be useless to the usufructuary if be did not consume and expend them, or change the substance of them, as money, grain, liquors. Civ. Code of Louis. art. 525, et seq.; 1 Browne's Civ. Law, 184; Poth. Tr. du Douaire, n. 194; Ayl. Pand. 319; Poth. Pand. tom. 6, p. 91; Lecons El. du Dr. Civ. Rom. 414 Inst. lib. 2, t. 4; Dig. lib. 7, t. 1, 1. 1 Code, lib. 3, t. 33; 1 Bouv. Inst. Theolo. ps. 1, c. 1, art. 2, p. 76.

USUFRUCTUARY, civil law. One who has the right and enjoyment of an usufruct.

2. Domat, with his usual clearness, points out the duties of the usufructuary, which are, 1. To make an inventory of the things subject to the usu−fruct, in the presence of those having an interest in them. 2. To give secur−ity for their restitution; when the usufruct shall be at an end. 3. To take good care of the things subject to the usufruct. 4. To pay all taxes, and claims which arise while the thing is in his possession, as a ground−rent. 5. To keep the thing in repair at his own expense. Lois Civ. liv. 1, t. 11, s. 4. See Estate for life.

USURPATION, torts. The unlawful assumption of the use of property which belongs to another; an interruption or the disturbing a man in his right and possession. Toml. Law Dict. h. t.

2. According to Lord Coke, there are two kinds of usurpation. 1. When a stranger, without right, presents to a church, and his clerk is admitted; and, 2. When a subject uses a franchise of the king without lawful authority. Co. Litt. 277 b.

USURPATION, government. The tyrannical assumption of the government by force contrary to and in violation of the constitution of the country.

USURPED POWER, insurance. By an article of the printed proposals which are considered as making a part of the contract of insurance it is provided, that "No loss of damage by fire, happening by any invasion, foreign enemy, or any military or usurped power whatsoever will be made good by this company." Lord Chief J. Wilmot, Mr. Justice Clive, and Mr. Justice Bathurst, against the opinion of Mr. Justice Gould, determined that the true import of the words usurped power in the proviso, was an invasion, from abroad, or an internal rebellion, where armies are drawn up against each other, when the laws are silent, and when the firing of towns becomes unavoidable; but that those words could not mean the power of a common mob. 2 Marsh. Ins. 390.

USURPER, government. One who assumes the right of government by force, contrary to and in violation of the constitution of the country. Toull. Dr. Civ. n. 32. Vide Tyranny,

USURY, contracts. The illegal profit which is required and received by the lender of a sum of money from the borrower for its use. In a more extended and improper sense, it is the receipt of any profit whatever for the use of money: it is only in the first of these senses that usury will be here considered.

2. To constitute a usurious contract the following are the requisites: 1. A loan express or implied. 2. An agreement that the money lent shall be returned at all events. 3. Not only that the money lent shall be returned, but that for such loan a greater interest than that fixed by law shall be paid.

3. − 1. There must be a loan in contemplation of the parties; 7 Pet. S. C. Rep. 109, 1 Clarke R. 252; and if there be a loan, however disguised, the contract will be usurious, if it be so in other respects. Where a loan was made of depreciated bank notes to be repaid in sound funds, to enable the borrower to pay a debt he owed dollar for dollar, it was considered as not being usur−ious. 1 Meigs, R. 585. The bona fide sale of a note, bond or other security at a greater discount than would amount to legal interest, is not per se, a loan, although the note may be endorsed by the seller, and he remains responsible. 9 Pet. S. C. Rep. 103; 1 Clarke, R. 30. But, if a note, bond; or other security be made with a view to evade the laws of usury, and afterwards sold for a less amount than the interest, the transaction will be considered a loan; 2 Johns. Cas. 60; 3 Johns. Cas. 66; 15 Johns. R. 44 2 Dall. 92; 12 Serg. & Rawle, 46 and a sale of a man's own note, endorsed by himself, will, be considered a loan. lt is a general rule that a contract, which, in its inception, is unaffected by usury, can never be invalidated by any subsequent usurious transaction. 7 Pet. S. C. Rep. 109. On the contrary, when the contract was originally usurious, and there is a substitution by a new contract, the latter will generally be considered usurious. 15 Mass. R. 96.

4. − 2. There must be a contract for the return of the money at all events; for if the return of the principal with interest, or of the principal only, depend upon a contingency, there can be no usury; but if the contingency extend only to interest, and the principal be beyond the reach of hazard, the lender will be guilty of usury, if he received interest beyond the amount allowed by law. As the principal is put to hazard in insurances, annuities and bottomry, the parties may charge and receive greater interest than is allowed by law in common cases, and the transaction will not be usurious.

5. − 3. To constitute usury the borrower must not only be obliged to return the principal at all events, but more than lawful interest: this part of the agreement must be made with full consent and knowledge of the contracting parties. 3 Bos. & Pull, 154. When the contract is made in a foreign country the rate of interest allowed by the laws of that country may be charged, and it will not be usurious, although greater than the amount fixed by law in this. Story, Confl. of Laws, _292. Vide, generally, Com. Dig. h. t.; Bac. Ab. h. t.; 8 Com. Dig. h. t.; Lilly's Reg. h. t.; Dane's Ab. h. t.; Petersdorff's Ab. h. t.; Vin. Ab. h. t.; 2 Bl. Com. 454; Comyn on Usury, passim; 1 Pt. S. C Rep. Index, h. t.; 1 Supp. to Yes. jr. 307, 337; Yelv. 47; 1 Ves. jr. 527; 1 Saund 295, note 1; Poth. h. t.; and the article Anatocism; Interest.

UTERINE BROTHER, domestic relations. A brother by the mother's side.

UTI POSSIDETIS. This phrase, which means as you possess, is used in international law to signify that the parties to a treaty are to retain possession of what they have acquired by force during the war.

TO UTTER, crim. law. To offer, to publish.

2. To utter and publish a counterfeit note is to assert and declare, directly or indirectly, by words or actions, that the note offered is good. It is not necessary that it should be passed in order to complete the offence of uttering. 2. Binn. R. 338, 9. It seems that reading out a document, although the party refuses to show it, is a sufficient uttering. Jebb's Ir. Cr. Cas. 282. Vide East, P. C. 179; Leach, 251; 2 Stark. Ev. 378 1 Moody, C. C. 166; 2 East, P. C. 974 Russ. & Ry. 113; 1 Phil. Ev. Index, h. t.; Roscoe's Cr. Ev. 301. The merely showing a false instrument with intent to gain a credit when there was no intention or attempt made to pass it, it seems would not amount to an uttering. Russ. & Ry. 200. Vide Ringing the charge.

UTTER BARRISTER, English law, Those barristers who plead without the bar, and are distinguished from benchers, or those who have been readers and who are allowed to plead within the bar, as the king's counsel are. The same as ouster barrister. See Barrister.

UXOR, civil law. A woman lawfully married.

V.

VACANCY. A place which is empty. The term is principally applied to cases where an office is not filled.

2. By the constitution of the United States, the president has the power to fill up vacancies that may happen during the recess of the senate. Whether the president can create an office and fill it during the recess of the senate, seems to have been much questioned. Story, Const. _1553. See Serg. Const. Law, ch. 31; 1 Breese, R. 70.

VACANT POSSESSION, estates. An estate which has been abandoned by the tenant; the abandonment must be complete in order to make the possession vacant, and therefore if the tenant have goods on the premises, it will not be so considered. 2 Chit. Rep. 17 7; 2 Str. 1064; Bull. N. P. 97; Comyn on Landl. & Ten. 507, 517.

VACANT SUCCESSION. An inheritance for which the heirs are unknown.

VACANTIA, BONA, civil law. Goods without an owner. Such goods escheat.

TO VACATE. To annul, to render an act void; as to vacate an entry which has been made on a record when the court has been imposed upon by fraud, or taken by surprise.

VACATION. That period of time between the end of one term and beginning of another. During vacation, rules and orders are made in such cases as are urgent, by a judge at his chambers.

VACCARIA, old Engl. law. A word which is derived from vacca, a cow, and signifies a dairy−house. Co. Litt. 5 b.

VADIUM, contracts. A pledge, or surety.

VADIUM MORTUUM, contracts. A mortgage or dead−pledge; it is a security given by the borrower of a sum of money, by which he grants to the lender an estate in fee, on condition that if the money be not repaid at the time appointed, the estate so put in pledge shall continue to the lender as dead or gone from the mortgagor. 2 Bl. Com. 257; 1 Pow. Mortg. 4.

VADIUM VIVUM, contracts. A species of security by which the borrower of a sum of money, made over his

estate to the lender, until he had received that sum out of the issues and profits of the land; it was so called because neither the money nor the lands were lost, and were not left in lead pledge, but this was a living pledge, for the profits of the land were constantly paying off the debt. Litt. sect. 206; 1 Pow. on Mort. 3; Termes de la Ley, h. t.

VAGABOND. One who wanders about idly, who has no certain dwelling. The ordonnances of the French define a vagabond almost in the same terms. Dalloz, Dict. Vagabondage. See Vattel, liv. 1, _219, n.

VAGRANT. Generally by the word vagrant is understood a person who lives idly without any settled home; but this definition is much enlarged by some sta−tutes, and it includes those who refuse to work, or go about begging. See 1 Wils. R. 331; 5 East, R. 339: 8 T. R. 26.

VAGUENESS. Uncertainty.

2. Certainty is required in contracts, wills, pleadings, judgments, and indeed in all the acts on which courts have to give a judgment, ana if they be vague, so as not to be understood, they are in general invalid. 5 B. & C. 583; 1 Russ. & M. 116 1 Ch. Pract. 123. A charge of "frequent intemperance" and "habitual indolence" are vague and too general. 2 Mart. Lo. Rep. N. S. 530. See Certainty; Nonsense; Uncertainty.

VALID. An act, deed, will, and the like, which has received all the formalities required by law, is said to be valid or good in law.

VALUABLE CONSIDERATION, contracts. An equivalent for a thing purchased. Vide Vin. Ab. Consideration, B; 2 Bl. Com. 297; Consideration.

VALUATION. The act of ascertaining the worth of a thing; or it is the esti−mated worth of a thing.

2. It differs from price, which does not always afford a true criterion of value, for a thing may be bought very dear or very cheap. In some contracts, as in the case of bailments or insurances, the thing bailed or insured is sometimes valued at the time of making the contract, so that if lost, no dispute may arise as to the amount of the loss. 2 Marsh. Ins. 620; 1 Caines, 80; 2 Caines 30; Story, Bailm. _253, 4; Park Ins. 98; Wesk. Ins. h. t.; Stev. on Av. part 2; Ben. on Ins. ch. 4.

VALUE, common law. This term has two different meanings. It sometimes expresses the utility of an object, and some times the power of purchasing other good with it. The first may be called value in use, the latter value in exchange.

2. Value differs from price. The latter is applied to live cattle and ani−mals; in a declaration, therefore, for taking cattle, they ought to be said to be of such a price; and in a declaration for taking dead chattels or those which never had life, it ought to lay them to be of such a value. 2 Lilly’s Ab. 620.

VALUE RECEIVED. This phrase is usually employed in a bill of exchange or promissory note, to denote that a consideration has been given for it.

2. The expression value received, when put in a bill of exchange, will bear two interpretations: the drawer of the bill may be presumed to acknowledge the fact that he has received value of the payee; 3 M. & S. 351; or when the bill has been made payable to the order of the drawer, it implies that value has been received by the acceptor. 5 M. & S. 65. In a promissory note, the expression imports value received from the payee. 5 B. & C. 360.

VALUED POLICY. A valued policy is one where the value has been set on the ship or goods insured, and this value has been inserted in the policy in the nature of liquidated damages, to save the necessity of proving it in case of loss. 1 Bouv. Inst. n. 1230.

VARIANCE, pleading, evidence. A disagreement or difference between two parts of the same legal proceeding, which ought to agree together. Variances are between the writ and the declaration, and between the declaration and the evidence.

2. − 1. When the variance is a matter of substance, as if the writ sounds in contract, and the other in tort, and e converso, or if the writ demands one thing or subject, and the declaration another, advantage may be taken of it, even in arrest of judgment; for it is the writ which gives authority to the court to proceed in any given suit, and, therefore, the court can have no authority to hear and determine a cause substaatially different from that in the writ. Hob. 279; Cro. Eliz. 722. But if the variance is in matter of mere form, as in time or place, when that circumstance is immaterial, advantage can only be taken of it by plea in abatement. Yelv. 120; Latch. 173; Bac. Ab. Abatement, I; Gould, Pl. c. 5, _98 1 Chit. Pl. 438.

3. − 2. A variance by disagreement in some particular point or points only between the allegation and the evidence, when upon a material point, is as fatal to the party on whom the proof lies, as a total failure of evidence. For example; the plaintiff declared in covenant for not repairing, pursuant to the covenant in a lease, and stated

the covenant, as a covenant to "repair when and as need should require;" and issue was joined on a traverse of the deed alleged. The plaintiff at the trial produced the deed in proof, and it appeared that the covenant was to "repair when and as need should require, and at farthest after notice:" the latter words having been omitted in the declaration. This was held to be a variance, because the additional words were material, and qualified the effect of the contract. 7 Taunt. 385. But a variance in mere form or in matter quite immaterial, will not be regarded. Str. 690. Vide 1 Vin. Ab. 41; 12 Vin. Ab. 63; 21 Vin. Ab. 538 Com. Dig. Abatement, G 8, H 7; Id.; Amendment, D 7, 8, V 3: Bail, R 7; Obligation, B 4; Pleader, C 14, 15, L 24, 30; Record, C, D, F; Phil. Ev. Index, 11. t. Stark. Ev. Index, h. t., Roscoe's Ev. Index, h. t.; 18 E. C. L. R. 139, 149, 153 1 Dougl. 194; 2 Salk. 659; Harr. Dig. h. t. Chit. Pl. Index, h. t.; United States Dig. Pleading II, d and e; Bouv. Inst. Index: h. t.

VASSAL, feudal law. This was the name given to the holder of a fief, bound to perform feudal service; this word was then always correlative to that of lord, entitled to such service.

2. The vassal himself might be lord of some other vassal.

3. In aftertimes, this word was used to signify a species of slave who owed servitude, and was in a state of dependency on a superior lord. 2 Bl. Com. 53; Merl. Repert. h. t.

VECTIGALIA. Among the Romans this word signified duties which were paid to the prince for the importation and exportation of certain merchandise. They differed from tribute, which was a tax paid by each individual . Code, 4, 61, 5 and 13.

VEJOURS. An obsolete word, which signified viewers or experts. (q. v.)

VENAL. Something that is bought. The term is generally applied in a bad sense; as, a venal office is an office which has been purchased.

VENDEE, contr. A purchaser; (q. v.) a buyer.

VENDITION. A sale; the act of selling.

VENDITIONI EXPONAS, practice. That you expose to sale. The name of a writ of execution, directed to the sheriff, commanding him to sell goods or chattels, and in some states, lands, which he has taken in execution by virtue of a fieri facias, and which remain unsold.

2. Under this writ the sheriff is bound to sell the property in his hands, and he cannot return a second time, that he can get no buyers. Cowp. 406; and see 2 Saund. 47, 1. 2 Chit. Rep. 390; Com. Dig. Execution, C 8; Grab. Pr. 359; 8 Bouv. Inst. n. 3395.

VENDOR, contracts. A seller. (q. v.) One wbo disposes of a thing in consideration of money. Vide Purchaser; Seller.

VENIRE FACIAS, practice, crim. law. According to the English law, the proper process to be issued on an indictment for any petit misdemeanor, on a penal statute, is a writ called venire facias. 2. It is in the nature of a summons to cause the party to appear. 4 Bl. Com. 18 1 Chit. Cr. Law, 351.

VENIRE, OR VENIRE PACIAS JURATORES, practice. The name of a writ directed to the sheriff commanding him to cause to come from the body of the county before the court from which it issued, on some day certain and therein specified, a certain number of qualified citizens wbo are to act as jurors in the said court. Steph. Pl. 104; 2 Graydon's Forms, 314; and see 6 Serg. & Rawle, 414; 21 Vin. Ab. 291; Com. Dig. Enquest, C 1, &c.; Id. Pleader, 2 S 12, 3 0 20; Id. Process, D 8; 3 Chit. Pr. 797.

VENIRE FACIAS DE NOVO, practice. The name of a new writ of venire facias; this is awarded when, by reason of some irregularity or defect in the proceeding on the first venire, or the trial, the proper effect of that which has been frustrated, or the verdict become void in law: as, for example, when the jury has been improperly chosen, or an uncertain, ambiguous or defective verdict has been rendered. Steph. Pl. 120 21 Vin. Ab. 466 1 Sell. Pr. 495.

VENTE A REMERE. A term used in Louisiana, which signifies a sale made reserving a right to the seller to repurchase the property gold by returning the price paid for it.

2. The time during which a repurchase may be made cannot exceed ten years, and if by the agreement it so exceed, it shall be reduced to ten years. The time fixed for redemption must be strictly adhered to and cannot be enlarged by the judge, nor exercised afterwards. Code 1545−1549.

3. The following is an instance, of a vente a remere. A sells to B, for the purpose of securing B against endorsement, with a clause that "whenever A should relieve B from such endorsements, without B's, having recourse on the land, then B would reconvey the same to A, for A's own use." This is a vente a remere, and until A releases B from his endorsements, the property is B's, and forms no part of A's estate. 7 N. S. 278. See 1 N. S.

528; 3 L. R. 153; 4 L. R. 142; Troplong, Vente, ch. 6; 6 Toull. p. 257.

VENTER or VENTRE. Signifies literally the belly. In law it is used figuratively for the wife: for example, a man has three children by the first, and one by the second venter.

2. A child is said to be in ventre sa mere before it is born; while it is a foetus.

VENTER INSPICIENDO, Eng. law. A writ directed to the sheriff, commanding him that, in the presence of twelve men, and as many women, he cause examination to be made, whether a woman therein named is with child or not; and if with child, then about what time it will be born; and that he certify the same. It is granted in a case when a widow, whose husband had lands in fee simple, marries again soon after her husband's death, and declares herself pregnant by her first husband and, under that pretext, withholds the lands from the next heir. Cro. Eliz. 506; Fleta, lib. 1, c, 15.

VENUE, pleading. The venue is the county from which the jury are to come, who are to try the issue. Gould, Pl. c. 3, _102; Archb. Civ. Pl. 86.

2. As it is a general rule, that the place of every traversable fact stated in the pleadings must be distinctly alleged, or at least that some certain place must be alleged for every such fact, it follows that a venue must be stated in every declaration.

3. In local actions, in which the subject or thing to be recovered is local, the true venue must be laid; that is, the action must be brought in that county where the cause of action arose: among these are all real actions, and actions which arise out of some local subject, or the violation of some local rights or interest; as the common law action of waste, trespass quare clausum fregit, trespass for nuisances to houses or lands disturbance of right of way, obstruction or diversion of ancient water courses, &c. Com. Dig. Action, N 4; Bac. Abr. Actions Local, A a.

4. In a transitory action, the plaintiff may lay the venue in any county he pleases; that is, he may bring suit wherever he may find the defendant and lay his cause of action to have arisen there even though the cause of action arose in a foreign jurisdiction. Cowp. 161; Cro. Car. 444; 9 Johns. R. 67; Steph. Pl. 306; 1 Chitty, Pl. 273; Archb. Civ. Pl. 86. Vide, generally, Chit. Pl. Index, h. t.; Steph. Pl. Index, h. t.; Tidd's Pr. Index, h. t.; Graham's Practice, Index, h. t.; Com. Dig. Abatement, H 13; Id. Action, N 13; Id. Amendment, H 1 Id. Pleader, S 9; 21 Vin. Ab. 85 to 169 1 Vern. 178; Yelv. 12 a; Bac. Ab. Actions, Local and Transitory, B; Local Actions; Transitory Actions.

VERAY. This is an ancient manner of spelling urai, true.

2. In the English law, there are three kinds of tenants: 1. Veray, or true tenant, who is one who holds in fee simple. 2. Tenant by the manner, (q. v.) who is one who has a less estate than a fee which remains in the reversioner. 3. Veray tenant by the manner, who is the same as tenant by the manner, with this difference only, that the fee simple, instead of remaining in the lord, is given by him or by the law to another. Hamm. N. P. 394.

VERAY TENANT, or TRUE TENANT, Eng. law. One who holds a fee simple; in pleadings, he is called simply tenant. He differs from a tenant by the manner in this, that the latter holds a less estate than a fee which remains in the reversioner.

2. A veray tenant by the manner is the same as tenant by the manner, with this difference only, that the fee simple, instead of remaining in the land, is given by him or by the law, to another. Ham. N. P. 394.

VERBAL. Parol; by word of mouth; as verbal agreement; verbal evidence. Not in writing.

VERBAL NOTE. In diplomatic language, memorandum or note not signed, sent when an affair has continued a long time without any reply, in order to avoid the appearance of an urgency, which, perhaps, the affair does not require; and, on the other hand, not to afford any ground for supposing that it is forgotten, or that there is no intention of not prosecuting it any further, is called a verbal note.

VERBAL PROCESS. In Louisiana, by this term is understood a written account of any proceeding or operation required by law, signed by the person commissioned to perform the duty, and attested by the signature of witnesses. Vide Proces Verbal.

VERDICT, Practice. The unanimous decision made by a jury and reported to the court on the matters lawfully submitted to them in the course of the trial of a cause.

2. Verdicts are of several kinds, namely, privy and public, general, partial, and special.

3. A privy verdict is one delivered privily to a judge out of court. A verdict of this kind is delivered to the judge after the jury have agreed, for the convenience of the jury, who after having given it, separate. This verdict is of no force whatever; and this practice being exceedingly liable to abuse, is seldom if ever allowed in the United States.

4. A public verdict is one delivered in open court. This verdict has its full effect, and unless set aside is conclusive on the facts, and when judgment is rendered upon it, bars all future controversy in personal actions. A private verdict must afterwards be given publicly in order to give it any effect.

5. A general verdict is one by which the jury pronounce at the same time on the fact and the law, either in favor of the plaintiff or defendant. Co. Lit. 228; 4 Bl. Com. 461; Code of Prac. of Lo. art. 519. The jury may find such a verdict whenever they think fit to do so.

6. A partial verdict in a criminal case is one by which the jury acquit the defendant of a part of the accusation against him, and find him guilty of the residue: the following are examples of this kind of a verdict, namely: when they acquit the defendant on one count and find him guilty on another, which is indeed a species of general verdict, as he is generally acquitted on one charge, and generally convicted on another; when the charge is of an offence of a higher, and includes one of an inferior degree, the jury may convict of the less atrocious by finding a partial verdict. Thus, upon an indictment for burglary, the defendant may be convicted of larceny, and acquitted of the nocturnal entry; upon an indictment for murder, he may be convicted of manslaugh−ter; robbery may be softened to simple larceny; a battery, into a common assault. 1 Chit. Cr. Law, 638, and the cases there cited.

7. A special verdict is one by which the facts of the case are put on the record, and the law is submitted to the judges. Lit. Sel. Cas. 376; Breese, 176; 4 Rand. 504; 1 Hen. & Munf. 235; 1 Wash. C. C. 499; 2 Mason, 31. The jury have an option, instead of finding the negative or affirmative of the issue, as in a general verdict, to find all the facts of the case as disclosed by the evidence before them, and, after so setting them forth, to conclude to the following effect: "that they are ignorant, in point of law, on which side they ought upon those facts to find the issue; that if upon the whole matter the court shall be of opinion that the issue is proved for the plaintiff, they find for the plaintiff accordingly, and assess the damages at such a sum, &c.; but if the court are of an opposite opinion, then they find vice versa." This form of finding is called a special verdict. In practice they have nothing to do with the formal preparation of the special verdict. When it is agreed that a verdict of that kind is to be given, the jury merely declare their opinion as to any fact remaining in doubt, and then the verdict is adjusted without their further interference. It is settled, uncler the correction of the judge, by the counsel and, attorneys on either, side, according to the state of the facts as found by the jury, with respect to all particulars on which they have delivered an opinion, and, with respect to other particulars, according to the state of facts, which it is agreed, that they ought to find upon the evidence before them. The special verdict, when its form is thus settled is, together with the whole proceedings on the trial, then entered on record; and the question of law, arising on the facts found, is argued before the court in bank, and decided by that court as in case of a demurrer. If either party be dissatisfied with their decision, he may afterwards resort to a court of error. Steph. Pl. 113; 1 Archb. Pr. 189; 3 Bl. Com. 377; Bac. Abr. Verdict, D, E.

8. There is another method of finding a special verdict this is when the jury find a verdict generally for the plaintiff, but subject nevertheless to the opinion of the judges or the court above on a special case stated by the counsel on both sides with regard to a matter of law. 3 Bl. Com. 378; and see 10 Mass. R. 64; 11 Mass. R. 358. See, generally, Bouv. Inst. Index, h. t..

VERIFICATION, pleading. Whenever new matter is introduced on either side, the plea must conclude with a verification or averment, in order that the other party may have an opportunity of answering it. Carth. 337; 1 Lutw. 201; 2 Wils. 66; Dougl. 60; 2 T. R. 576; 1 Saund, 103, n. 1; Com. Dig. Pleader, E.

2. The usual verification of a plea containing matter of fact, is in these words, "And this he is ready to verify," &c. See 1 Chit. Pl. 537, 616; Lawes, Civ. Pl. 144; 1 Saund, 103, n. 1; Willes, R. 5; 3 Bl. Com. 309.

3. In one instance however, new matter need not conclude with a verification and then the pleader may pray judgment without it; for example, when the matter pleaded is merely negative. Willes, R. 5; Lawes on Pl. 145. The reason of it is evident, a negative requires no proof; and it would therefore be imper−tinent or nugatory for the pleader, who pleads a negative matter, to declare his readiness to prove it.

VERIFICATION, practice. The examination of the truth of a writing; the certificate that the writing is true. Vide Authentication.

VERMONT. The name of one of the new states of the United States of America. lt was admitted by virtue of "An act for the admission of the state of Vermont into this Union," approved February, 18, 1791, 1 Story’s L. U. S. 169, by which it is enacted, that the state of Vermont having petitioned the congress to be admitted a member of the United States, Be it enacted, &c., That on the fourth day of March, one thousand seven hundred and ninety−one, the said state, by the name and style of "the state of Vermont," shall be received and admitted into this

Union, as a new and entire member of the United States of America.

2. The constitution of this state was adopted by a convention holden at Windsor on the ninth day of July, one thousand seven hundred and ninety−three. The powers of the government are divided into three distinct branches; namely, the legislative, the executive, and the judicial.

3. − 1. The supreme legislative power is vested in a house of representatives of the freemen of the commonwealth or state of Vermont, ch. 2, _2. The house of representatives of the freemen of this state shall consist of persons most noted for wisdom and virtue, to be chosen by ballot, by the freemen of every town in this state respectively, on the first Tuesday in September, annually forever. Ch. 2, _8. The representatives so chosen, a majority of whom shall constitute a quorum for transacting any other business than raising a state tax, for which two−thirds of the members elected shall be present, shall meet on the second Thursday of the succeeding October, and shall be styled The General Assembly of the State of Vermont: they shall have power to choose their speaker, secretary of state, their clerk, and other necessary officers of the house − sit on their own adjournrments prepare bills, and enact them into laws − judge of the elections and qualifications of their own members; they may expel members, but not for causes known to their own constituents antecedent to their elections; they may administer oaths and affirmations in matters depending before them, redress grievances, impeach state criminals, grant charters of incorporation, constitute towns, boroughs, cities, and counties: they may annually, on their first session after their election, in conjunction with the council, or oftener if need be, elect judges of the supreme and several county and probate courts, sheriffs, and justices of the peace; and also, with the council may elect major generals and brigadier generals, from time to time, as often as there shall be occasion; and they shall have all other powers necessary for the legislature of a free and sovereign state: but they shall have no power to add to, alter, abolish, or infringe any part of this constitution. Ch. 2 _9.

4. − 2. The supreme executive power is vested in a governor, or in his absence a lieutenant−governor, and council. Ch. 2, _3. The duties of the executive are pointed out by the second chapter of the constitution as follows:

5. − _10. The supreme executive council of this state shall consist of a governor, lieutenant−governor, and twelve persons, chosen in the following manner, viz. The freemen of each town shall, on the day of the election, for choosing representatives to attend the general assembly, bring in their votes for governor, with his name fairly written, to the constable, who shall seal them up, and write on them, votes for the governor, and deliver them to the representatives chosen to attend the general assembly; and at the opening of the general assembly there shall be a committee appointed out of the council and assembly, who, after being duly sworn to the faithful discharge of their trust, shall proceed to receive, sort, and count the votes for the governor, and declare the person who has the major part of the votes to be governor for the year ensuing. And if there be no choice made, then the council and general assembly, by their joint ballot, shall make choice of a governor. The lieu−tenant−governor and treasurer shall be chosen in the manner above directed. And each freeman shall give in twelve votes, for twelve counsellors, in the same manner, and the twelve highest in nomination shall serve for the ensuing year as counsellors.

6. − _11. The governor, and, in his absence, the lieutenant−governor, with the council, a major part of whom, including the governor, or lieutenant−gov−ernor, shall be a quorum to transact business, shall have power to commission all officers, and also to−appoint officers, except where provision is, or shall be otherwise made by law, or this frame of government; and shall supply every vacancy in. any office, occasioned by, death, or otherwise, until the office can be filled in the manner directed by law or this constitution.

7. They are to correspond with other states, transact business with officers of government, civil and military, and to prepare such business as may appear to them necessary to lay before the general assembly. They shall sit as judges to hear and determine on impeachments, taking to their assistance, for advice only, the judges of the supreme court. And shall have power to grant pardons, and remit fines, in all cases whatsoever, except in treason and murder; in which they shall have power to grant reprieves, but not to pardon, until after the end of the next session of the assembly; and except in cases of impeachment, in which there shall be no remission or mitigation of punishment, but by act of the legislature.

8. They are also to take care that the laws be faithfully executed. They are to expedite the execution of such measures as may be resolved upon by the general assembly. And they may draw upon the treasury for such sums as may be appropriated by the house of representatives. They may also lay embargoes, or probibit the exportation of any commodity, for any time not exceeding thirty days, in the recess of the house only. They may grant such licenses as shall be directed by law; and shall have power to call together the general assembly, when necessary, before the day to which they shall stand. adjourned. The governor shall be captain general and commander−in−

chief of the forces of the state, but shall not command in person, except advised thereto by the council, and then only so long as they shall approve thereof. And the lieutenant−governor shall, by virtue of his office, be lieutenant−general of all the forces of the state. The governor or lieutenant−governor, and council shall meet at the time and place with the general assembly; the lieutenant−governor shall, during the presence of the commander−in−chief, vote and act as one of the council: and the governor and, in his absence, the lieutenant−governor, shall, by virtue of their offices, preside in council, and have a casting, but no other vote. Every member of the council shall be a justice of the peace, for the whole state, by virtue of his office. The governor and council shall have a secretary, and keep fair books of their proceedings, wherein any councillor may enter his dissent, with his reasons to support it; and the governor may appoint a secretary for himself and his council.

9. − _16. To the end that laws, before they are enacted, may be more maturely considered, and the inconvenience of hasty determinations, as much as possible, prevented, all bills which originate in the assembly shall be laid before the governor and council for their revision and concurrence, or proposals of amendment; who shall return the same to the general assembly, with their proposals of amendment, if any, in writing; and if the same are not agreed to by the assembly, it shall be in the power of the governor and council to suspend the passing of such bill until the next session of the legislature: Provided, that if the governor and council shall neglect or refuse to return any such bill to the assembly with written proposals of amendment, within five days, or before the rising of the legislature, the same shall become a law.

10. − _24. Every officer of state, whether judicial or executive, shall be liable to be impeached by the general assembly, either when in office or after his resignation or removal, for mal−administration. All impeachments shall be before the governor, or lieutenant governor and council, who shall hear and determine the same, and may award costs; and no trial or impeachment shall be a bar to a prosecution at law.

11. − 3. The judicial power is regulated by the second chapter of the constitution, as follows

12. − _4. Courts of justice shall be maintained in every county in this state, and also in new counties, when formed: which courts shall be open for the trial of all causes proper for their cognizance; and justice shall be therein impartially administered, without corruption or unnecessary delay. The judges of the supreme court shall be justices of the peace throughout the state; and the several judges of the county courts, in their respective counties, by virtue of their office, execpt in the trial of such causes as may be appealed to the county court.

13. − _5. A future legislature may, when they shall conceive the same to be expedient and necessary, erect a court of chancery, with such powers as are usually exercised by that court or as shall appear for the interest of the commonwealth: Provided, they do not constitute themselves the judges of the said court.

VERSUS. Against; as A B versus C D. This is usually abbreviated v.

VERT. Everything bearing green leaves in a forest. Bac. Ab. Courts of the Foreat; Manwood, 146.

VESSEL, mar. law. A ship, brig, sloop or other craft used in navigation . 1 Boul. Paty, tit. 1, p. 100 . See sup.

2. By an act of congress, approved July 29, 1850, it is provided that any person, not being an owner, who shall on the high seas, wilfully, with. intent to burn or destroy, set fire to any ship or other vessel, or otherwise attempt the destruction of such ship or other vessel, being the property of any citizen or citizens of the United States, or procure the same to be done, with the intent aforesaid, and being thereof lawfully convicted, shall suffer imprisonment to hard labor, for a term not exceeding ten years, nor less than three years, according to the aggravation of the offence.

TO VEST, estates. To give an immediate fixed right of present or future enjoyment; an estate is vested in possession when there exists a right of present enjoyment; and an estate is vested in interest, when there is a present fixed right of future, enjoyment. Feame on Rem. 2; vide 2 Rop on Leg. 757; 8 Com. Dig. App. h. t.; 1 Vern. 323, n.; 10 Vin. Ab. 230; 1 Suppl. to Ves. jr. 200, 242, 315, 434; 2 Id. 157 5 Ves. 511.

VESTED REMAINDER, estates. One by which a present interest passes to the party, though to be enjoyed in future, and by which the estate is invariably fixed to remain to a determinate person, after the particular estate has been spent. 2 Bouv. Inst. n. 1831. Vide Remainder.

VESTURE OF LAND. By this phrase is meant all things, trees excepted, which grow upon the surface of the land, and clothe it externally.

2. He who has the vesture of land has a right, generally, to exclude others from entering upon the superficies of the soil. 1 Inst. 4, b; Hamm. N. P. 151; pee. 7 East, R. 200; 1 Ventr. 393; 2 Roll. Ab. 2.

VETERA STATUTA. The name of vetera statuta, ancient statutes, has been given to the statutes commencing with Magna Charta', and ending with those of Edward II. Crabb's Eng. Law, 222.

VETO, legislation. This is a Latin word signifying, I forbid.

2. It is usually applied to the power of the president of the United States to negative a bill which has passed both branches of the legislature. The act of refusing to sign such a bill, and the message which is sent to congress assigning the reasons for a refusal to sign it, are each called a veto.

3. When a bill is engrossed, and has received the sanction of both houses, it is transmitted to the president for his approbation. If he approves of it, he signs it. If he does not, he sends it, with his objections, to the house in which it originated, and that house enter the objections on their journals, and proceed to reconsider the bill. Coast. U. S. art. I, s. 7, cl. 2. Vide Story on the Const. _878; 1 Kent, Com. 239.

4. The governors of the several states have generally a negative on the acts of the legislature. When exercised with due caution, the veto power is some additional security against inconsiderate and hasty legislation, or where bills have passed through prejudice or want of due reflection. It was, however, mainly intended as a weapon in the hands of the chief magistrate to defend the executive department from encroachment and usurpation, as well as a just balance of the constitution.

5. The veto power of the British sovereign has not been exercised for more than a century. It was exercised once during the, reign of Queen Anne. Edinburgh Rev. 10th vol. 411, &c.; Parke's Lectures, 126. But anciently the king frequently replied Le roy s'avisera, which was in effect withholding his assent. In France the king had the initiative of all laws, but not the veto. See 1 Toull. art. 39; and see Nos. 42, 52, note 3.

VEXATION. The injury or damage which, is suffered in consequence of the tricks of another.

VEXATIOUS SUITS, torts. A vexatictus suit is one which has been instituted maliciously, and without probable cause, whereby a damage has ensued to the defendant.

2. The suit is either a criminal prosecution, a conviction before a magistrate, or a civil action. The suit need not be altogether without foundation; if the part which is groundless has subjected the party to an inconvenience, to which he would not have been exposed had the valid cause of complaint alone have been insisted on, it is injurious. 4 Taunt. 616; 4 Rep. 14 1 Pet. C. C. Rep. 210; 4 Serg. & Rawle, 19, 23.

3. To make it vexatious, the suit must have been instituted maliciously. As malice is not in any case of injurious conduct necessarily to be inferred from the total absence of probable cause for exciting it, and in the present instance the law will not allow it to be inferred from that circumstance, for fear of being mistaken, it casts upon the suffering party the onus of proving express malice. 2 Wils. R. 307; 2 Bos. & Pull. 129; Carth. 417; but see what Gibbs, C. J., says in Berley v. Bethune, 5, Taunt. 583; see also 1 Pet. C. C. R. 210; 2 Browne's R. Appx. 42, 49; Add. R. 270.

4. It is necessary that the prosecution should have been carried on without probable cause. The law presumes that probable cause existed until the party aggrieved can show to the contrary. Hence he is bound to show the total absence of probable cause. 5 Taunt. 580; 1 Campb. R. 199. See 3 Dow. Rep. 160; 1 T. Rep. 520; Bul. N. P. 14; 4 Burr. 1974; 2 Bar. & C. 693; 4 Dow. & R. 107; 1 Car. R. 138, 204; 1 Gow, Rep. 20; 1 Wils. 232; Cro. Jac. 194. He is also under the same obligation when the original proceeding was a civil action. 2 Wils. 307.

5. The damage which the party injured sustains from a vexatious suit for a crime, is either to his person, his reputation, his estate or his relative rights. 1. whenever imprisonment is occasioned by a malicious unfounded criminal prosecution, the injury is complete, although the detention may have been momentary, and the party released on bail. Carth. 416. 2. When the bill of indictment contains scandalous aspersions likely to impair the reputation of the accused, the damage is complete. See 12 Mod. 210; 2 B. & A. 494; 3 Dow., & R. 669. 3. Notwithstanding his person is left at liberty, and his character is unstained by the proceedings, (as where the indictment is for a trespass, Carth. 416,) yet if he necessarily incurs expense in defending himself against the charge, he has a right to have his losses made good. 10 Mod. 148,; Id. 214; Gilb. 185; S. C. Str. 978. 4. If a master loses the services and assistance of his domestics, in consequence of a vexatious suit, he may claim a compensation. Ham. N. P. 275. With regard to a damage resulting from a civil action, when prosecuted in a court of competent jurisdiction, the only detriment the party can sustain, is the imprisonment of his person, or the seizure of his property, for as to any expense, he may be put to, this, in contemplation of law, has been fully compensated to him by the costs adjudged. 4 Taunt. 7; 2 Mod. 306; 1 Mod. 4. But where the original suit was coram non judice, the party as the law formerly stood, necessarily incurred expense without the power of remuneration, unless by this action, because any award of costs the court might make would have been a nullity. However, by a late decision such an adjudication was holden unimpeachable, land that the party might well have an action of debt to recover the amount. 1 Wils. 316. So that the law, in this respect, seems to have taken a new

turn, and, perhaps, it would now be decided, that no action can under any other circumstances but imprisonment of the person or seizure of the property, be maintained for suing in an improper court. Vide Carth. 189.

See, in general, Bac. Abr. Action on the case, H; Vin. Abr. Actions, H c; Com. Dig. Action upon the case upon desceit; 5 Amer. Law Journ. 514; Yelv. 105, a note 2; Bull. N. P. 13; 3 Selw. N. P. 535; Notes on Co. Litt. 161, a, (Day's edit.); 1 Saund. 230, n. 4; 3 Bl. Com. 126, n. 21, (Chit. edit.); this Dict. tit. Malicious Prosecution.

VEXED QUESTION, vexata quaestio. A question or point of law often discussed or agitated, but not determined nor settled.

VI ET ARMIS. With force and arms. When man breaks into another's close vi et armis, he may be opposed force by force, for there is no time to request him to go away. 2 Salk. 641; 8 T. R. 78, 357.

2. These words are universally inserted in a writ of trespass, because they point out that the act has been done with force, and they are technical words to designate this offence. Ham. N. P. 4, 10, 12; 1 Chit. Pl. 122 to 125; and article Force.

VIA. A cart−way, which also includes a foot−way and a horse−way. Vide Way.

VIABLE, Vitae habilis, capable of living. This is said of a child who is born alive in such an advanced state of formation as to be capable of living. Unless be is born viable he acquires no rights and cannot transmit them to his heirs, and is considered as if he bad never been born.

2. This term is used In the French law, Toull. Dr. Civ. Fr. tome 4, p. 101 it would be well to engraft it on our own Vide Traill. Med. Jur. 46, and Dead Born.

VIABILITY, med. jur. An aptitude to live after birth; extra uterine life. 1 Briand. Med. Leg. 1ere partie, c. 6, art. 2. See 2 Sav. Dr. Rom. Append. III. for a learned discussion of this subject.

VICE. A term used in the civil law and in Louisiana, by which is meant a defect in a thing; an imperfection. For example, epilepsy in a slave, roaring and crib−biting in a horse, are vices. Redhibitory vices are those for which the seller will be compelled to annul a sale, and take back the thing sold. Poth. Vente, 203; Civ. Code of Lo. art. 2498 to 2507; 1 Duv. n. 396.

VICE−ADMIRAL. The title of an officer in the navy; the next in rank after the admiral. In the United States we have no officer by this name.

VICE−CHANCELLOR. The title of a judicial officer who decides causes depending in the court of chancery; his opinions may be reversed, discharged or altered by the chancellor.

VICE−CONSUL. An officer who performs the duties of a consul within a part of the district of a consul, or who acts in the place of a consul. Vide 1 Phil. Ev. 306.

VICE−PRESIDENT OF THE UNITED STATES. The title of the second officer, in point of rank, in the government of the United States.

2. To obtain a correct idea of the law relating to this officer, it is proper to consider; 1. His election. 2. The duration of his office. 3. His duties.

3. − 1. He is to be elected in the manner pointed out under the article President of the United States. (q. v.) See, also, 3 Story on the Const. 1447 et seq.

4. − 2. His office in point of duration is coextensive with that of the president.

5. − 3. The fourth clause of the third section of the first article of the constitution of the United States, directs, that "the vicepresident of the United States shall be presidont of the. senate, but shall have no vote unless they be equally divided." And by article 2, s. 1, clause 6, of the constitution, it is provided, that "in case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vicepresident."

6. When the vice−president exercises the office of president, he is called the President of the United States.

VICE VERSA. On the contrary; on opposite sides.

VICECOMES. The sheriff.

VICECOMES NON MISIT BREVE. The sheriff did not send the writ. An entry made on the record when nothing has been done by virtue of a writ which has been directed to the sheriff.

VICENAGE. The neighborhood; the venue. (q. v.)

VICINETUM. The neighborhood; vicenage; the venue. Co. Litt. 158 b.

VICONTIEL. Belonging to the sheriff.

VIDELICET. A Latin adverb signifying to wit, that is to say, namely, scilicet. (q. v.) This word is usually, abbreviated Viz.

2. The office of the videlicet is to mark, that the party does not undertake to prove the precise circumstances alleged, and in such case he is not required to prove them. Steph. Pl. 309'; 7 Cowen, R. 42; 4 John. R. 450; 3 T. R. 67, 643; 8 Taunt. 107; Greenl. Ev. _60; 1 Litt. R. 209. Vide Yelv. 94; 3 Saund. 291 a, note; New Rep. *465, note; Dane's Ab. Iudex, h. t.; 2 Pick. 214, 222; 16 Mass. 129.

VIEW. A prospect.

2. Every one is entitled to a view from his premises, but he thereby acquires no right over the property of his neighbors. The erection of buildings which obstruct a man's view, therefore, is not unlawful, and such buildings cannot be considered a nuisance. 9 Co. R. 58 b. Vide Ancient Lights; Nuisance,

VIEW, DEMAND OF, practice. In most real and mixed actions, in order to ascertain the identity of land claimed with that in the tenant's possession, the tenant is allowed, after the demandant has counted, to demand a view of the land in question; or if the subject of claim be rent, or the like, a view of the land out of which it issues; Vin. Abr. View; Com. Dig. View; Booth, 37; 2 Saund. 45 b; 1 Reeves' Hist 435, This, however, is confined to real or mixed actions; for in personal actions the view does not lie. In the action of dower unde nihil habet, it has been much questioned whether the view be demandable or not; 2 Saund. 44, n, 4; and there are other real and mixed actions in which it is not allowed. The view being granted, the course of proceeding is to issue a writ, commanding the sheriff to cause the defendant to have a view of the land, It being the interest of the demandant to expedite the proceedings, the duty of suing out the writ lies upon him, and not upon the tenant; and when, in obedience to its exigency, the sheriff causes view to be made, the demandant is to show to the tenant, in all ways possible, the thing in demand with its metes and bounds. On the return of the writ into court, the demandant must count de novo; that is, declare again Com. Dig. Pleader, 2 Y 3; Booth, 40; and the pleadings proceed to issue.

2. This proceeding of demanding view, is, in the present rarity of real actions, unknown in practice.

VIEWERS. Persons appointed by the courts to see and examine certain matters, and make a report of the facts together with their opinion to the court. In practice they are usually appointed to lay out roads and the like. Vide Experts.

VIGILANCE. Proper attention in proper time.

2. The law requires a man who has a claim to enforce it in proper time, while the adverse party has it in his power to defend himself; and if by his neglect to do so, he cannot afterwards establish such claim, the maxim vigilantibus non dormientibus leges subserviunt, acquires full force in such case. For example, a claim not sued for within the time required by the acts of limitation, will be presumed to be paid; and the mere possession of corporeal real property, as if in fee simple, and without admitting any other ownership for sixty years, is a sufficient title against all the world, and cannot be impeached by any dormant claim. See 3 Bl. Com. 196, n; 4 Co. 11 b. Vide Twenty years.

VILL. In England this word was used to signify the parts into which a hundred or wapentake was divided. Fortesc. De Laud, ch. 24. See Co. Litt. 115 b. It also signifies a town or city. Barr. on the Stat. 133.

VILLAIN., An epithet used to cast contempt and contumely on the person to whom it is applied.

2. To call a man a villain in a letter written to a third person, will entitle him to an action without proof of special damages. 1 Bos. & Pull. 331.

VILLEIN, Engl. law. A species of slave during the feudal times.'

2. The feudal villein of the lowest order was unprotected as to property, and subjected to the post ignoble services; but his circumstances were very different from the slave of the southern states, for no person was, in the eye of the law, a villein, except as to his master; in relation to all other persons he was a freeman. Litt. Ten. s. 189, 190; Hallam's View of the Middle Ages, vol. i. 122, 124; vol. ii. 199.

VILLENOUS JUDGMENT, punishments. In the English law it was a judgment given by the common law in attaint, or in cases of conspiracy.

2. Its effects were to make the object of it lose his liberam legem, and become infamous. He forfeited his goods and chattels, and his lands during life; and this barbarous judgment further required that his lands should be wasted, his houses razed, his trees rooted up, and that his body should be cast into−prison. He 'could not be a juror or witness. Burr. 996, 1027; 4 Bl. Com. 136.

VINCULO MATRIMONII. A divorce. A vinculo matrimonii, is one from the bonds of matrimony. Such a divorce generally enables the parties to marry again.

VINDICATION, civil law. The claim made to property by the owner of it. 1 Bell's Com. 281, 5th ed. See Revendication.

VIOLATION. An act done unlawfully and with force. In the English stat. of 25 E. III., st. 5, c. 2, it is declared to be high treason in any person who shall violate the king's companion; and it is equally high treason in her to suffer willingly such violation. This word has been construed under this statute to mean carnal knowledge. 3 Inst. 9; Bac. Ab, Treason, E.

VIOLENCE. The abuse of force. Theorie des Lois Criminelles, 32. That force which is employed against common right, against the laws, and against public liberty. Merl. h. t, 2. In cases of robbery, in order to convict the accused, it is requisite to prove that the act was done with violence; but this violence is not confined to an actual assault of the person, by beating, knocking down, or forcibly wresting from him on the contrary, whatever goes to intimidate or overawe, by the apprehension of personal violence, or by fear of life, with a view to compel the delivery of propert equally falls within its limits. Alison, Pr. Cr. Law of Scotl. 228; 4 Binn. R. 379; 2 Russ. on Cr. 61; 1 Hale P. C. 553. When an article is merely snatched, as by a sudden pull, even though a momentary force be exerted, it is not such violence as to constitute a robbery. 2 East, P. C. 702; 2 Russ. Cr. 68; Dig. 4, 2, 2 and 3.

VIOLENT PROFITS, Scotch law. The gains made by a tenant holding over, are so called. Ersk. Inst. R. 2, tit. 6, s. 54.

VIOLENTLY, pleading. This word was formerly supposed to be necessary in an indictment, in order to charge a robbery from the person, but it has been holden unnecessary. 2 East, P. C. 784; 1 Chit. Cr. Law, *244. The words " feloniously and against the will," usually introduced in such indictments, seem to be sufficient. It is usual also to aver a putting in fear, though this does not seem to be requisite. Id.

VIRGA. An obsolete word, which signifies a rod or staff, such as sheriffs, bailiffs, and constables carry, as a badge or ensign of their office.

VIRGINIA. The name of one of the original states of the United States of America. This colony was chartered in 1606, by James the First, and this charter was afterwards altered in 1609 and 1612; and in 1624 the charter was declared to be forfeited under proceedings under a writ of quo warranto. After the fall of the charter, Virginia continued to be a royal province until the period of the American Revolution.

2. A constitution, or rather bill of rights, was adopted by a convention of the representatives of the good people of Virginia, on the 12th day of June, 1776. An amended constitution or form of government for Virginia was adopted January 14, 1830, which has been superseded by the present constitution, which was adopted August 1, 1851.

3. The legislative, executive, and judiciary departments , shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to either house of assembly. Art 2.

4. − _1. The legislature is composed of two branches, the house of delegates and the senate, which together are called the general assembly of Virginia.

5. − 1. The house of delegates will be considered with reference, 1. To the qualifications of the electors. 2. The qualifications of members. 3. The number of members. 4. Time of their election.

6. − 1st. Every white male citizen of the commonwealth, of the age of twenty−one years, who has been a resident of the state for two years, and of the county, city, or town where he offers to vote for twelve months next preceding an election, and no other person, shall be qualified to vote for members of the general assembly, and all officers elective by the people: but no person in the military, naval, or marine service of the United States shall be deemed a resident of this state, by reason of being staationed therein. And no person shall have the right to vote, who is of unsound mind, or a pauper, or a non−commissioned officer, soldier, seaman, or marine in the service of the United States, or who has been convicted of bribery in an election, or of any infamous offence.

7. − 2. The general assembly at its first session after the; adoption of this constitution, and afterwards as occasion may require, shall cause every city or town, the white population of which exceeds five thousand, to be laid off into convenient wards, and a separate place of voting to be established in each, and thereafter no inhabitant of such city or town shall be allowed to vote except in the ward in which be resides.

8. − 3. No voter, during the time for holding any election at which he is entitled to vote, shall be compelled to perform military service, except in time of war or public danger; to work upon the public roads, or to attend any court as suitor, juror or witness; and no voter shall be subject to arrest under any civil process during his attendance at elections, or in going to and returning from them.

9. − 4. ln all elections votes shall be given openly, or viva voce, and not by ballot. But dumb persons, entitled to suffrage, may vote by ballot. Art. 3.

10. − 2d. Any person may be elected a delegate who shall have attained the age of twenty−one years, and shall be actually a resident within the city, county, town, or election district, qualified by this constitution to vote for members of the general assembly: but no person holding a lucrative office, no minister of the gospel, or priest of any religious denomination, no salaried officer of any banking corporation or company, and no attorney for the commonwealth shall be capable of being elected a member of either house of assembly. The removal of any person elected to neither branch of the general assembly, from the county, city, town, or district for which he was elected, shall vacate his office. Art. 4, s. 5, _7.

11.−3d. The house of delegates is to consist of one hundred and fity−two members. Art. 4, _2.

12. − 4th. The members of the general assembly are to be chosen biennially. Art. 4, _2.

13.− 2. The senate will be considered in the same order that the house of delegates has been. 1. The qualifications of electors are the same as for electors of delegates. 2. Any person may be elected a senator who has attained the age of twenty−five years, and shall be actually a resident within the district, and qualified to vote for members of the general assembly. The other qualifications are the, same as those for delegates. Art. 4, s. 5, _7. 3. The number of senators is fifty. Art. 4, _3.

4. Senators are to be elected for the term of four years. Upon the assembling of the senators so elected, they shall be divided into two equal classes to be numbered by lot. The term of service of the senators of the first class shall expire with that of the delegates first elected under this constitution; and of the senators of the second class, at the expiration of two years thereafter; and this alternation shall, be continued, so that one−half of the senators may be chosen every second year. Art. 4, _3.

14. − 1. The chief executive ower of this commonwealth shall be vested in a governor. He shall hold the office for the term of four years, to commence on the ____ day of _____ next succeeding his election, and be ineligible to the same office for the term next succeeding that for which he was elected, and to any other office during his term of service.

15. − 2. The governor shall be elected by the voters at the times and places of choosing members of the general assembly. Returns of the election shall be transmitted under seal by the proper officers to the secretary of the commonwealth, who shall deliver them to the speaker of the house of delegates, on the first day of the next session of the general assembly. The speaker of the house of delegates shall within one week thereafter, in the presence of a majority of the senate and house of delegates, open the said retuns, and the votes shall then be counted. The person having the highest number of votes shall be declared elected; but if two or more shall have the highest and an equal number, of votes, one of them shall be chosen governor by the joint vote of the two houses of the general assembly. Contested elections for governor shall be decided by a like vote, and the mode of proceeding in such cases shall be prescribed by law.

16. − 3. No person shall be eligible to the office of governor unless he has attained the age of thirty years, is a native citizen of the United States, and has been a citizen of Virginia, for five years next preceding his election.

17. − 4. The governor shall reside at the seat of government; shall receive five thousand dollars for each year of his service, and, while in office, shall receive no other emolument from this or any other government.

18. − 5. He shall take care that the laws be faithfully executed; communicate to the general assembly at every session the condition of the commonwealth; recommend to their consideration such measures as he may deem expedient; and convene the general assembly on application of a majority of the members of both houses thereof, or when in his opinion the interest of the commonwealth may require it. He shall be commander−in−chief of the land and naval forces of the state; have power to embody the militia to repel invasion, suppress insurrection and enforce the execution of the laws; conduct, either in person or in such other manner as shall be prescribed by law, all intercourse with other and foreign states; and, during the recess of the general assembly, fill pro tempore all vacancies in those offices for which the constitution and laws make no provision but his appointments to such vacancies shall be by commissions to expire at the end of thirty days after the commencement of the next session of the general assembly. He shall have power to remit fines and pen−alties in such cases and under such rules and regulations as may be prescribed by law; and, except when the prosecution has been carried on by the house of delegates or the law shall otherwise particularly direct, to grant reprieves and pardons after conviction, and to commute capital punishment. But be shall communicate to the general assembly at each session, the particulars of every case of fine or penalty remitted, of reprieve or pardon granted and of punishment commuted, with his reasons for remitting, granting or commuting the same.

19. − 6. He may require information in writing from the officers in the executive department upon any subject

relating to the duties of their respective offices; and may also require the opinion in writing of the attorney− general upon any question of law connected with his official duties.

20. − 7. Commissions and grants shall run in the name of the commonwealth of Virginia, and be attested by the governor with the seal of the commonwealth annexed.

21. − 8. A lieutenant governor shall be elected at the same time, and for the same term, as the governor: and his qualification and the manner of his election in all respects shall be the same.

22. − 9. In case of the removal of the governor from office, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the lieutenant governor; and the general as− sembly shall provide by law for the discharge of the executive functions in other necessary cases.

23. − 10 The lieutenant governor shall be president of the senate, but shall have no vote; and while. acting as such, shall receive a compensation equal to that allowed to the speaker of the house of delegates. Art. 5, __1−10.

24. − _3. The judicial powers are regulated by the sixth article of the constitution, as follows:

25. − 1. There shall be a supreme court of appeals, district courts and circuit courts. The jurisdiction of these tribunals, and of the judges thereof, except so far as the same is conferred by this constitution, shall, be regulated by law.

26. − 2. The state shall be divided into twenty−one judicial circuits, ten districts and five sections.

27. − 3. The general assembly may, at the end of eight years after the adoption of this constitution, and thereafter at intervals of eight years, re−arrange the said circuits, districts and sections, and place any number of circuits in a district, and of districts in a section; but each circuit shall be altogether in one district, and each district in one section; and there shall not be less than two districts and four circuits in a section, and the number of sections shall not be increased or diminished.

28. − 6 For each circuit, a judge shall be elected by the voters thereof, who shall hold his office for the term of eight years, unless sooner removed in the manner prescribed by this constitution. He shall at the time of his election be at least thirty years of age, and during his continuance in office, shall reside in the circuit of which he is judge.

29. − 7. A circuit court shall be held at least twice a year by the judge of each circuit, in every county and corporation thereof, wherein a circuit court is now or may hereafter be established. But the judges in the same district may be required or authorized to hold the courts of their respective circuits alternately, and a judge of one circuit to hold a court in any other circuit.

30. − 8. A district court shall be held, at least once a year in every district, by the judges of the circuits constituting the section and the judges of the supreme court of appeals for the section of which the district forms a part, any three of whom may hold a court; but no judge shall sit or decide upon any appeal taken from his own decision. The judge of the supreme court of appeals of one section, may sit in the district courts of another section, when required or authorized by law to do so.

31. − 9. The district courts shall not have original jurisdiction, except in cases of habeas corpus, mandamus and prohibition.

32. − 10. For each section, a judge shall be elected by the voters thereof, who shall hold his office for the term of twelve years, unless sooner removed in the manner prescribed by this constitution. He shall at the time of his election be at least thirty−five years of age, and during his continuance in office, reside in the section for which he is elected.

33. − 11. The supreme court of appeals shall consist of the five judges so elected, any three of whom may hold a court. It shall have appellate jurisdiction only, except in cases of, habeas corpus, mandamus and prohibition. It shall not have jurisdiction in civil causes where the matter in controversy, exclusive of costs, is less, in value or amount than five hundred dollars, except in controversies concerning the title or boundaries of land, the; probate of a will, the appointment or qualification of a personal representative, guardian, committee or curator; or concerning a mill, road, way, ferry or landing, or the right of a corporation, or of a county to levy tolls or taxes; and except in cases of habeas corpus, mandamus and probibition, and cases involving freedom, or the constitutionality of a law.

34. − 12. Special courts of appeals, to consist of not less than three nor more than five judges, may be formed of the judges of the supreme court of appeals, and of the circuit courts, or any of them, to try any cases remaining on the dockets of the present court of appeals when the judges thereof cease to hold their offices; or to try any cases

which may be on the dockets of the supreme court of appeals established by this constitution, in respect to which a majority of the judges of said court may be so situated as to make it improper for them to sit on the bearing thereof.

35. − 13 When a judgment or decree is reversed or affirmed by the supreme court of appeals, the reasons therefor shall be stated in writing, and preserved with the record of the case.

36. − 14. Judges shall be commissioned by the governor, and shall receive fixed and adequate salaries which shall not be diminished during their continuance in office. The salary of a judge of the supreme court of appeals shall not be less than three thousand dollars and that of a judge of a circuit court not less than two thousand dollars per annum, except that of the judge of the fifth circuit, which shall not be less than fifteen hundred dollars per annum; and each shall receive a reasonable allowance for necessary travel.

37. − 15. No judge during his term of service shall hold any other office, appointment or public trust, and the acceptance thereof shall vacate his judicial office; nor shall he during such term, of within one year thereafter, be eligible to any political office.

38. − 16. No election of judge shall be held within thirty days of the time of holding any election of electors of president and vice−president of the United States, of members of congress or of the general assembly.

39. − 17. Judges may be removed from office by a concurrent vote of both houses of the general assembly, but a majority of all the members elected to each house must concur in such vote; and the cause of removal shall be entered. on the journal of each house. The judge, against whom the general assembly may be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereupon.

40. − 22. At every election of a governor, an attorney−general shall be elected by the voters of the commonwealth, for the term of four years. He shall be commissioned by the governor, shall perform such duties and receive such compensation as may be prescribed by law, and be removable in the manner prescribed for the removal of judges.

41. − 23. Judges and all other officers, whether elected or appointed, shall continue to discharge the duties of their respective offices after their terms of service, have expired, until their successors are qualified.

42. − 24. Writs shall run in the name of the commonwealth of Virginia and be attested by the clerks of the several courts. Indictments shall conclude, against the peace and dignity of the commonwealth.

43. − 25. There shall be in each county of the commonwealth, a county court, which shall be held monthly, by not less than three, nor more than, five justices, except when the law shall require the presence of a greater number.

44. − 26. The jurisdiction of the said court shall be the same as that of the existing county courts, except so far as it is modified by this constitution or may be changed by law.

45. − 27. Each county shall be laid off into districts, as nearly equal as may be in territory and population. In each district there shall be elected by the voters thereof, four justices of the peace, who shall be commissioned by the governor, reside in their respective districts, and hold their office for the term of four years. The justices so elected shall choose one of their own body, who shall be the presiding justice of the county court, and whose duty it shall be to attend each term of said court. The other justices shall be classified by law for the performance of their duties in court.

46. − 28. The justices shall receive for their services in court, a per diem compensation, to be ascertained by law, and paid out of the country treasury; and shall not receive any fee or emolument for other judicial services.

VIRILIA. The privy members of a man. Bract. lib. 3, p. 144.

VIRTUTE OFFICII. By virtue of his office. A sheriff, a constable, and some other officers may, virtute officii, apprehend a man who has been guilty of a crime in their presence.

VIS. A Latin word which signifies force. In law it means any kind of force, violence, or disturbance, relating to a man’s person or his property.

VIS IMPRESSA. Immediate force; original force. This phrase is applied to cases of trespass when a question arises whether an injury has been caused by a direct force, or one which is indirect. When the original force, or vis impressa, had ceased to act before the injury commenced, then there is no force, the effect is mediate, and the proper remedy is trespass on the case.

2. When the injury is the immediate consequence of the force or vis proxima, trespass vi et armis lies. 3 Bouv. Inst. n. 3483; 4 Bouv. Inst. n. 3583.

VIS MAJOR, a superior force. In law it signifies inevitable accident.

2. This term is used in the civil law in nearly the same same way that the words act of God, (q. v.) are used in the common law. Generally, no one is responsible for an accident which arises from the vis major; but a man may be so where he has stipulated that he would; and when he has been guilty of a fraud or deceit. 2 Kent, Com. 448; Poth. Pret a Usage, n. 48, n. 60 Story Bailm. _25.

VISA, civ. law. The formula put upon an act; a register; a commercial book, in order to approve of it and authenticate it.

VISITATION. The act of examining into the affairs of a corporation.

2. The power of visitation is applicable only to ecclesiastical and eleemo−synary corporations. 1 Bl. Com. 480; 2 Kid on Corp. 174. The visitation of civil corporations is by the government itself, through the medium of the courts of justice Vide 2 Kent, Com. 240.

VISITER. An inspector of the government, of corporations or bodies politic. 1 Bl. Com. 482. Vide Dane's Ab. Index, h. t.; 7 Pick. 303; 12 Pick. 244.

VISNE. The neighborhood; a neighboring place; a place near at hand; the venue. (q. v.)

2. Formerly the visne was confined to the immediate neighborhood, where the cause of action arose, and many verdicts were disturbed because the visne was too large, which, becoming a great grievance several statutes were passed to remedy the evil. The 21 James I, c. 13, gives aid after verdict where the visne is partly wrong, that is, where it is warded out of too many or too few places in the county named. The 16 and 17 Charles II. c. 8, goes further, and cures defects of the visne wholly, so that the cause is tried by a jury of the proper county. Vide Venue.

VIVA VOCE. Living voice; verbally. It is said a witness delivers his evidence viva voce, when he does so in open court; the term is opposed to deposition. It is sometimes opposed to ballot; as, the people vote by ballot, but their representatives in the legislature, vote viva voce.

VIVARY. A place where living things are kept; as a park, on land; or in the water, as a pond.

VIVUM VADIUM, or living pledge, contracts. When a man borrows a sum of money (suppose two hundred dollars) of another, and grants him an estate, as of twenty dollars per annum, to hold till the rents and profits shall repay the sum so borrowed.

2. This is an estate conditioned to be void as soon as such sum is raised. And in this case the land or pledge is said to be living; it subsists, and survives the debt, and immediately on the discharge, of that, results back to the borrower. 2 Bl. Com. 157. See Antichresis; Mortgage.

VOCATIO IN JUS, Roman civ. law. According to the practice in the legis actiones of the Roman law, a person having a demand against another, verbally cited him to go with him to the praetor in jus eamus. In jus te voco. This was denominated vocatio in jus. If a person thus summoned refused to go, he could be compelled by force to do so unless he found a vindex, that is, a procurator or a person to undertake his cause. When the parties appeared before the praetor, they went through the particular formalities required by the action applicable to the cause. If the cause was not ended the same day, the parties promised to appear again at another day, which was called vadimonium. See Math. V. 25.

VOID, contracts, practice. That which has no force or effect.

2. Contracts, bequests or legal proceedings may be void; these will be severally considered.

3. − 1. The invalidity of a contract may arise from many causes. 1. When the parties have no capacity to contract; as in the case of idiots, lunatics, and in some states, under their local regulations, habitual drunkards. Vide Par−ties to contracts, _1; 1 Hen. & Munf 69; 1 South. R. 361; 2 Hayw. R. 394; Newl. on Contr. 19; 1 Fonbl. Eq. 46; 3 Camp. 128; Long on Sales, 14; Highm. on Lunacy, 111, 112 Chit. on Contr. 29, 257.

4. − 2. When the contract has for its object the performance of an act malum in se; as a covenant to rob or kill a man, or to commit a breach of the peace. Shep. To. 163; Co. Lit. 206, b 10 East, R. 534.

5. − 3. When the thing to be performed is impossible; as, if a man were to covenant to go from the United States to Europe in one day. Co. Lit. 206, b. But in these cases, the impossibility must exist at the time of making the contract; for although subsequent events may excuse the performance, the contract is not absolutely void; as, if John contract to marry Maria, and, before the time appointed, the covenantee marry her himself, the contract will not be enforced, but it was not void in its creation. It differs from a contract made by John, who, being a married man, and known to the coveiaantee, enters into a contract to marry Maria during the continuance of his existing marriage, for in that case the contract is void.

6. − 4. Contracts against public policy; as, an agreement not to marry any one, or not to follow any business; the

one being considered in restraint of marriage, and the other in restraint of trade. 4 Burr. 2225; S. C. Wilm. 364; 2 Vern. 215; Al. 67: 8 Mass. R. 223; 9 Mass. R. 522; 1 Pick. R. 443; 3 Pick. R. 188.

7. − 5. When the contract is fraudulent, it is void, for fraud vitiates everything. 1 Fonbl. Equity, 66, note Newl. on Contr. 352; and article Fraud. As to cases when a condition consists of several parts, and some are lawful and others are not, see article Condition.

8. − 2. A devise or bequest is void:. 1. When made by a person not lawfully authorized to make a will; as, a lunatic or idiot, a married woman, and an infant before arriving at the age of fourteen, if a male, and twelve if a female. Harg. Co. Lit. 896, If; Rob. on Wills, 28; Godolph. Orph. Leg. 21. 2. When there is a defect in the form of the will, or when the devise is forbidden by law; as, when a perpetuity is given, or when the devise in unintellig− ible. 3. When it has been obtained by fraud. 4. When, the devisee is dead. 5. And when there has been an express or implied revocation of the will. Vide Legacy; Will.

9. − 3. A writ or process is void when there was not any authority for issuing it, as where the court had no jurisdiction, In such case, the officers acting under it become trespassers, for they are required, notwithstanding it may sometimes be a difficult question of law, to decide whether the court has or has not jurisdiction. 2 Brownl. 124; 10 Co. 69; March's R. 118; 8 T. R. 424; 3 Cranch, R. 330; 4 Mass. R. 234. Vide articles Irregularity; Regular and Irregular Process. Vide, generally, 8 Com. Dig. 644; Bac. Ab. Conditions, K; Bac. Ab. Infancy, &c. I; Bac. Ab. h. t.; Dane's Ab. Index, h. t.; 3 Chit. Pr. 75; Yelv. 42, a, note 1; 1 Rawle, R. 163; Bouv. Inst Index, h. t.

VOIDABLE. That which has some force or effect, but which, in consequence of some inherent quality, may be legally annulled or avoided.

2. As a familiar example, may be mentioned the case of a contract, made by an infant with an adult, which maybe avoided or confirmed by the former on his coining of age. Vide Parties, contracts.

3. Such contracts are generally of binding force until avoided by the party having a right to annul them. Bac. Ab. Infancy, 1 3; Com. Dig. Enfant; Fonbl. Eq. b. 1, c. 2, _4, note b; 3 Burr. 1794 Nels. Ch. R. 5 5; 1 Atk. 3 5 4; Stra. 9 3 7; Perk. _12. VOIR. An old French word, which signifies the same as the modern word vrai, true. Voir dire, to speak truly, to tell the truth.

2. When a witness is supposed to have an interest in the cause, the party against whom he is called has the choice to prove such interest by calling another witness to that fact, or be may require the witness produced to be sworn on his voir dire as to whether he has an interest in the cause, or not, but the party against whom he is called will not be allowed to have recourse to both methods to prove the witness interest. If the witness answers he has no interest, he is competent, his oath being conclusive; if he swears he has an interest, he will be rejected.

3. Though this is the rule established beyond the power of the courts to change, it seems not very satisfactory. The witness is sworn on his voir dire to ascertain whether he has an interest, which would disqualify him, because he would be tempted to perjure himself, if he testified when interested. But when he is asked whether he has such an interest, if he is dishonest and anxious to be sworn in the case, he will swear falsely he has none, and his answer being conclusive, he will be admitted as competent; if, on the contrary, he swears truly he has an interest, when he knows that will exclude him, he is told that for being thus honest, he must be rejected. See, generally, 12 Vin. Ab. 48; 22 Vin. Ab. 14; 1 Dall, 375; Dane's Ab. Index, h. t.; and Interest.

VOLUNTARY. Willingly; done with one's consent; negligently. Wolff, _5.

2. To render an act criminal or tortious it must be voluntary. If a man, therefore, kill another without a will on his part, while engaged in the performance of a lawful act, and having taken proper care to prevent it, he is not guilty of any crime. And if he commit an injury to the person or property of another, he is not liable for damages, unless the act has been voluntary or through negligence, as when a collision takes place between two ships without any fault in either. 2 Dobs. R. 83 3 Hagg. Adm. R. 320, 414.

3. When the crime or injury happens in the performance of an unlawful act, the party will be considered as having acted voluntarily.

4. A negligent escape permitted by an officer having the custody of a prisoner will be presumed as voluntary; under a declaration or count charging the escape to have been voluntary, the party will, therefore, be allowed to give a negligent escape in evidence. 1 Saund. 35, n. 1. So Will.

VOLUNTARY CONVEYANCE, contracts. The transfer of an estate made without any adequate consideration of value.

2. Whenever a voluntary conveyance is made, a presumption of fraud properly arises upon the statute of 27th Eliz. cap. 4, which presumption may be repelled by showing that the transaction on which the conveyance was

founded, virtually contained some conventional stipulations, some compromise of interests or reciprocity of benefits, that point out an object and motive beyond the indulgence of affection or claims of kindred, and not reconcilable with the supposition of intent to deceive a purchaser. But unless so repelled, such a conveyance coupled with a subsequent negotiation for sale, is conclusive evidence of statutory fraud. 5 Day, 223, 341; 1 Johns. Cas. 161; 4 John. Ch. R. 450; 3 Conn. 450; 4 Conn. 1; 4 John. R. 536; 15 John. R. 14; 2 Munf. R. 363. A distinction has been made between previous and subsequent creditors; such a conveyance is void as to the former but not as to the latter. 8 Wheat. 229; 3 John. Ch. 481; and see 6 Alab. R. 506; 9 Alab. R. 937; 10 Conn. 69. And a conveyance by a father who, though in debt, is not in embarrassed circumstances, who makes a reasonable provision for a child, leaving property sufficient to pay his debts, is not per se, fraudulent. 4 Wheat. 27; 6 Watts & S. 97; 4 Verm. 889; 6 N. H. Rep. 67; 11 Leigh, 137; 5 Ohio, 121.

3. By the statute of 3 Henry VII. c. 4, all deeds of gifts of goods and chattels in trust for the donor were declared void; and by the statute of 13 Eliz. ch. 5, gifts of goods and chattels, as well as of lands, by writing or otherwise, made with intent to delay, hinder and defraud creditors, were rendered void as against the person to whom such frauds would be prejudicial.

4. The principles of these statutes, which indeed have been copied from the civil law, Dig. 42, 8 , 5, 11; 2 Bell's Com. 182, though they may not have been substantially reenacted, prevail throughout the United States. 8 Johns. Ch. R. 481; 1 Halst. R. 450; 5 Cowen, 87; 8 Wheat. R. 229; 11 Id. 199; 12 Serg. & Rawle, 448; 9 Mass. R. 390; 11 Id. 421; 4 Greenl. R. 52; 2 Pick. R. 411; 8 Com. Dig. App. h. t.; 22 Vin. Ab. 15; 1 Vern. 38, 101; Rob. on Fr. Conv. 65, 478 Dane's Ab. Index, h. t.; 14 Ves. 344; 4 McCord, 294; 1 Rawle. 231; 1 Rep, Const. Ct. 180; 1 N. & McCord, 334; Coxe, 56; Hare & Wall. Sel. Dec. 33−69. Vide Contracts; Indebtedness; Settlement.

5. As between the parties such conveyances are, in general, good. 2 Rand. 384; 1 John. Chan. R. 329, 336; 1 Wash. 274 And when it has once been executed and delivered, it cannot be recalled; even where an unmarried man executes a voluntary trust deed for the benefit of future children, nor can he relieve himself from a provision in the conveyance to the trustee, under which the income of the trust property is to be paid to him at. the discretion of a third person. 2 My. & Keen, 496. See 2 Moll. 257.

VOLUNTARY DEPOSIT, civil law. One which is made by the mere consent or agreement of the parties. 1 Bouv. Inst. n. 1054.

VOLUNTARY ESCAPE. The giving to a prisoner voluntarily, any liberty not authorized by law. 5 Mass. 310; 2 Chipm. 11; 3 Harr. & John. 559; 2 Harr. & Gill. 106; 2 Bouv. Inst. n. 2332.

VOLUNTARY JURISDICTION. In the ecclesiastical law, jurisdiction is either contentious jurisdiction, (q. v.) or voluntary jurisdiction. By the latter term is understood that kind of jurisdiction which requires no judicial proceedings, as, the granting letters of administration and receiving the probate of wills.

VOLUNTARY NONSUIT, practice. The abandonment of his cause by a plaintiff, and an agreement that a judgment for costs be entered against him. 3 Bouv. Inst. n. 3306.

VOLUNTARY SALE, contracts. One made freely, without constraint, by the owner of the thing &old. 1 Bouv. Inst. n. 974.

VOLUNTARY WASTE. That which is either active or wilful, in contradistinction to that which arises from mere negligence, which is called permissive waste. 2 Bouv. Inst. 2394, et seq. Vide Waste.

VOLUNTEERS, contracts. Persons who receive a voluntary conveyance. (q. v.)

2. It is a general rule of the courts of equity that they will not assist a mere volunteer who has a defective conveyance. Fonbl. B. 1, c. 5, s. 2, and See the note there for some exceptions to this rule. Vide, generally, 1 Madd. Ch. 271,. 1 Supp. to Ves. jr. 320; 2 Id. 321; Powell on Mortg. Index, h. t. 4 Bouv. Inst. n. 3968−73.

VOLUNTEERS, army. Persons who in time of war offer their services to their country and march in its defence.

2. Their rights and duties are prescribed by the municipal laws of the different states. But when in actual service they are subject to the laws of the United States and the articles of war.

VOTE. Suffrage; the voice of an individual in making a choice by many. The total number of voices given at an election; as, the presidential vote.

2. Votes are either given, by ballot, v.) or viva voce; they may be deli−vered personally by the voter himself, or, in some cases, by proxy. (q. v.)

3. A majority (q. v.) of the votes given carries the question submitted, unless in particular cases when the constitution or laws require that there shall be a majority of all the voters, or when a greater number than a simple majority is expressly required; as, for example in the case of the senate in making treaties by the president and

senate, two−thirds of the senators present must concur. Vide Angell on Corpor. Index, h. t.

4. When the votes are equal in number, the proposed measure is lost.

VOTER. One entitled to a vote; an elector.

VOUCHEE. In common recoveries, the person who is called to warrant or defend the title, is called the vouchee. 2 Bouv. Inst. n. 2093.

VOUCHER, accounts. An account book in which are entered the acquittances, or warrants for the accountant's discharge. It also signifies any acquittance or receipt, which is evidence of payment, or of the debtor's being discharged. See 3 Halst. 299.

VOUCHER, common recoveries. The voucher in common recoveries, is the person on whom the tenant to the praecipe calls to defend the title to the land, because he is supposed to have warranted the title to him at the time of the original purchase.

2. The person usually employed for this purpose is the cryer of the court, who is therefore called the common voucher. Vide Cruise, Dig. tit. 36, c. 3, s. 1; 22 Vin. Ab. 26; Dane, Index, h. t.; and see Recovery.

VOUCHER TO WARRANTY, common recoveries. The calling one who has warranted lands, by the party warranted, to come and defend the suit for him. Co. Litt. 101, b. Vide Warranty, voucher to.

VOYAGE, marine law. The passage of a ship upon the seas, from one port to another, or to several ports.

2. Every voyage must have a terminus a quo and a terminus ad quem. When the insurance is for a limited time, the two extremes of that time are the termini of the vovage insured. When a ship is insured both outward and homeward, for one entire premium, this with reference to the insurance, is considered but one voyage; and the terminus a quo is also the terminus ad quem. Marsh. Ins. B. 1, c. 7, s. 1 to 5. As to the commencement and ending of the voyage, see Risk.

3. The voyage, with reference to the legality of it, is sometimes confounded with the traffic in which the ship is engaged, and is frequently said to be illegal, only because the trade is so. But a voyage may be lawful, and yet the transport of certain goods on board the ship may be prohibited or the voyage may be illegal, though the transport of the goods be lawful. Marsh. Ins. B. 1, c. 6, s. 1. See Lex Merc. Amer. c. 10, s. 14; Park. Ins. ch. 12; Wesk. his. tit. Voyages; and Deviation,

4. In the French law the Voyage de conserve, is the name given to designate an agreement made between two or more sea captains that they will not separate in their voyage, will lend aid to each other, and will defend themselves against a common enemy, or the enemy of one of them, in case of attack. This agreement is said to be a partnership. 8 Pardes. Dr. Com. n. 656; 4 Pardes. Dr. Com. n. 984; 20 Toull. n. 17.

W.

WADSET, Scotch law. A right, by which lands, or other heritable subjects, are impignorated by the proprietor to his creditor in security of his debt; and, like other heritable rights, is perfected by seisin.

2. Wadsets, by the present practice, are commonly made out in the form of mutual contracts, in which one party sells the land, and the other grants, the right of reversion. Ersk. Pr. L. Scot., B. 2, t. 8, s. 1, 2.

3. Wadsets are proper or improper. Proper, where the use of the land shall go for the use of the money. Improper, where the reverser agrees to make up the deficiency; and where it amounts to more, the surplus profit of the land is applied to the extinction of the principal. Id. B. 2, t. 8, s. 12, 13.

WADSETTER, Scotch law. A creditor to whom a wadset is made.

TO WAGE, contracts. To give a pledge or security for the performance of anything; as to wage or gage deliverance; to wage law, &c. Co. Litt. 294. This word is but little used.

WAGER OF BATTEL. A superstitious mode of trial which till lately disgraced the English law.

2. The last case of this kind was commenced in the year 1817, but not procceded in to judgment; and at the next session of the British parliament an act was passed to abolish appeals of murder, treason, felony or other offences, and wager of battel, or joining issue or trial by battel in writs of right. 59 Geo. III. c. 46. For the history of this species of trial the reader is referred to 4 Bl. Com. 347; 3 Bl. Com. 337; Encyclopedie, Gage de Bataille; Steph. Pl. 122, and App. note 35.

WAGER OF LAW, Engl. law. When an action of debt is brought against a man upon a simple contract, and the defendant pleads nil debit, and concludes his plea with this formula, "And this he is ready to defend against him the said A B and his suit, as the court of our lord the king here shall consider," &c., he is said to wage his law. He is then required to swear he owes the plaintiff nothing, and bring eleven compurgators who will swear they

believe him. This mode of trial, is trial by wager of law.

2. The wager of law could only be had in actions of debt on simple contract, and actions of detinue; in consequence of this right of the defendant, now actions on simple contracts are brought in assumpsit, and instead of bridging detinue, trover has been substituted.

3. If ever wager of law had any existence in the United States, it is now completely abolished. 8 Wheat. 642. Vide Steph. on Plead. 124, 250, and notes, xxxix.; Co. Entr. 119; Mod. Entr. 179; Lilly's Entr. 467; 3 Ch it. Pl. 497; 13 Vin. Ab. 58; Bac. Ab. h. t.; Dane's Ab. Index, h. t. For the origin of this form of trial, vide Steph. on Pl. notes xxxix; Co. Litt. 294, 5 3 Bl. Com. 341.

WAGER POLICY, contracts. One made when the insured has no insurable interest.

2. It has nothing in common with insurance but the name and form. It is usually in such terms as to preclude the necessity of inquiring into the interest of the insured; as, "interest or no interest," or, "without further proof of interest than the policy."

3. Such contracts being against the policy of the law are void. 1 Marsh. Ins. 121 Park on Ins. Ind. h. t.; Wesk. Ins. h. t.; See 1 Sumn. 451; 2 Mass. 1 3 Caines, 141.

WAGERS. A wager is a bet a contract by which two parties or more agree that a certain sum of money, or other thing, shall be paid or delivered to one of them, on the happening or not happening of an uncertain event.

2. The law does not prohibit all wagers. 1 Browne's Rep. 171 Poth. du Jeu, n. 4.

3. To restrain wagers within the bounds of justice the following conditions must be observed: 1. Each of the parties must have the right to dispose of the thing which is the object of the wager. 2. Each must give a perfect and full consent to the contract, 3. There must he equality between the parties. 4. There must be good faith between them. 5. The wager must not be forbidden by law. Poth. du 4. In general, it seems that a wager is legal and maybe enforced in a court of law 3 T. R. 693, if it be not, 1st, Contrary to public policy, or immoral; or if it do not in some other respect tend to the detriment of the public. 2d. If it do not affect the interest, feelings, or character of a third person.

5. − 1. Wagers on the event of an election laid before the poll is open; 1 T. R. 56. 4 Johns. 426; 4 Harr. & McH. 284; or after it is closed; 8 Johns. 454, 147; 2 Browne's Rep. 182; are unlawful. And wagers are against public policy if they are in restraint of marriage; 10 East, R. 22; made as to the mode of playing an illegal game; 2 H. Bl. 43; 1 Nott & McCord, 180; 7 Taunt. 246; or on an abstract speculative question of law or judicial practice, not arising out of circumstances in which the parties have a real interest. 12 East, R. 247, and Day's notes, sed vide Cowp. 37.

6. − 2. Wagers as to the sex of an individual Cowp. 729; or whether an unmarried woman had borne or would have a child; 4 Campb. 152, are illegal; as unnecessarily leading to painful and indecent considerations. The supreme court of Pennsylvania have laid it down as a rule, that every bet about the age, or height, or weight, or wealth, or circumstances, or situation of any person, is illegal; and this whether the subject of the bet be man, woman, or child, married or single, native or foreigner, in this country or abroad. 1 Rawle, 42. And it seems that a wager between two coach−proprietors, whether or not a particular person would go by one of their coaches is illegal, as exposing that person to inconvenience. 1 B. & A. 683.

7. In the case even of a legal wager, the authority of a stakeholder, like that of an arbitrator, may be rescinded by either party before the event happens. And if after his authority has been countermanded, and the stake has been demanded, he refuse to deliver it, trover or assumpsit for money had and received is maintainable. 1 B. & A. 683. And where the wager is in its nature illegal, the stake may be recovered, even after the event, on demand made before it has been paid over. 4 Taunt. 474; 5 T. R. 405; sed vide 12 Johns. 1. See further on this subject, 7 Johns. 434; 11 Johns. 23; 10 Johns. 406,468; 12 Johns. 376; 17 Johns. 192; 15 Johns. 5; 13 Johns. 88; Mann. Dig. Gaming; Harr. Dig. Gaining; Stakeholder.

WAGES, contract. A compensation given to a hired person for his or her services. As to servants wages, see Chitty, Contr. 171 as to sailors' wages, Abbott on Shipp. 473; generally, see 22. Vin. Abr. 406; Bac. Abr. Master, &c., H; Marsh. Ins. 89; 2 Lill. Abr. 677; Peters' Dig. Admiralty, pl. 231, et seq.

WAIFS. Stolen goods waived or scattered by a thief in his flight in order to effect his escape.

2. Such goods by the English common law belong to the king. 1 Bl. Com. 296; 5 Co. 109; Cro. Eliz. 694. This prerogative has never been adopted here against the true owner, and never put in practice against the finder, though against him there would be better reason for adopting it. 2 Kent, Com. 292. Vide Com. Dig. h. t.; 1 Bro. Civ. Law, 239, n.

WAIVE. A term applied to a woman as outlaw is applied to a man. A man is an outlaw, a woman is a waive. T. L., Crabb's Tech. Dict. h. t.

To WAIVE. To abandon or forsake a right.

2. To waive signifies also to abandon without right; as "if the felon waives, that is, leaves any goods in his flight from those who either pursue him, or are apprehended by him so to do, he forfeits them, whether they be his own goods, or goods stolen by him." Bac. Ab . Forfeiture, B.

WAIVER., The relinquishment or refusal to accept of a right.

2. In practice it is required of every one to take advantage of his rights at a proper time and, neglecting to do so, will be considered as a waiver. If, for example, a defendant who has been misnamed in the writ and declaration, pleads over, he cannot afterwards take advantage of the error by pleading in abatement, for his plea amounts to a waiver.

3. In seeking for a remedy the party injured may, in some instances, waive a part of his right, and sue for another; for example, when the defendant has committed a trespass on the property of the plaintiff, by taking it away, and afterwards he sells it, the injured party may waive the trespass, and bring an action of assumpsit for the recovery of the money thus received by the defendant. 1 Chit. Pl. 90.

4. In contracts, if, after knowledge of a supposed fraud, surprise or mistake, a party performs the agreement in part, he will be considered as having waived the objection. 1 Bro. Parl. Cas. 289.

5. It is a rule of the civil law, consonant with reason, that any one may renounce or waive that which has been established in his favor: Regula est juris antique omnes licentiam habere his quae pro se introducta sunt, renunciare. Code 2, 3, 29. As to what will amount to a waiver of a forfeiture, see 1 Conn. R. 79; 7 Conn. R. 45; 1 Jo Cas. 125; 8 Pick. 292; 2 N. H, Rep. 120 163; 14 Wend. 419; 1 Ham. R. 21. Vide Verdict.

WAKENING, Scotch law. The revival of an action.

2. An action is said to sleep, when it lies over, not insisted on for a year in which case it is suspended. 4, t. 1, n. 33. With us a revival is by scire facias. (q. v.)

WALL. A building or erection so well known as to need no definition. In general a man may build a wall on any part of his estate, to any height he may deem proper, and in such form as may best accommodate him; but he must take care not to erect a wall contrary to the local regulations, nor in such a manner as to be injurious to his neighbors. See Dig. 50, 16, 157. Vide Party Wall.

WANTONNESS, crim. law. A licentious act by one man towards the person of another without regard to his rights; as, for example, if a man should attempt to pull off another's hat against his will in order to expose him to ridicule, the offence would be an assault, and if he touched him it would amount to a battery. (q. v.)

2. In such case there would be no malice, but the wantonness of the act would render the offending party liable to punishment.

WAPENTAKE. An ancient word used in England as synonymous with hundred. (q. v.) Fortesc. De Laud. ch. 24.

WAR. A contention by force; or the art of paralysing the forces of an enemy.

2. It is either public or private. It is not intended here to speak of the latter.

3. Public war is either civil or national. Civil war is that which is waged between two parties, citizens or members of the same state or nation. National war is a contest between two or more independent nations) carried on by au−thority of their respective governments.

4. War is not only an act, but a state or condition, for nations are said to be at war not only when their armies are engaged, so as to be in the very act of contention, but also when, they have any matter of controversy or dispute subsisting between them which they are determined to decide by the use of force, and have declared publicly, or by their acts, their determination so to decide it.

5. National wars are said to be offensive or defensive. War is offensive on the part of that government which commits the first act of violence; it is defensive on the part of that government which receives such act; but it is very difficult to say what is the first act of violence. If a nation sees itself menaced with an attack, its first act of violence to prevent such attack, will be considered as defensive.

6. To legalize a war it must be declared by that branch of the government entrusted by the constitution with this power. Bro. tit., Denizen, pl. 20. And it seems it need not be declared by both the belligerent powers. Rob. Rep. 232. By the constitution of the United States, art. 1, s. 7, congress are invested with power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; and they have also the power to raise and support armies, and to provide and maintain a navy." See 8 Cranch, R. 110, 154; 1 Mason, R.

79, 81; 4 Binn. R 487. Vide, generally, Grot. B, 1, c. 1, s. 1 Rutherf. Inst. B. 1, c. 19; Bynkershoeck, Quest. Jur. Pub. lib. 1, c. 1; Lee on Capt. c. 1; Chit. Law of Nat. 28; Marten's Law of Nat. B. 8, c. 2; Phil. Ev. Index, h., t. Dane's Ab. Index, h. i.; Com. Dig. h. t. Bac. Ab. Prerogative, D 4; Merl. Repert. mot Guerre; 1 Inst. 249; Vattel, liv. 3, c. 1, _1; Mann. Com. B. 3, c. 1.

WARD, domestic relations. An infant placed by authority of law under the care of a guardian.

2. While under the care of a guardian a ward can make no contract whatever binding upon him, except for necessaries. When the relation of guardian and ward ceases, the latter is entitled to have an account of the administration of his estate from the former. During the existence of this relation, the ward is under the subjection of his guardian, who stands in locoparentis.

WARD, a district. Most cities are divided for various purposes into districts, each of which is called a ward.

WARD, police. To watch in the day time, for the purpose of preventing violations of the law.

2. It is the duty of all police officers and constables to keep ward in their respective districts.

WARD IN CHANCERY. An infant who is under the superintendence of the chancellor.

WARDEN. A guardian; a keeper. This is the name given to various officers: as, the warden of the prison; the wardens of the port of Philadelphia; church wardens.

WARDSHIP, Eng. law. Wardship was the right of the lord over the person and estate of the tenant, when the latter was under a certain age. When a tenant by knight's service died, and his heir was under age, the lord was entitled to the custody of the person and the lands of the heir, without any account, until the ward, if a male, should arrive at the age of twenty−one years, and, if a female, at eighteen. Wardship was also incident to a tenure in socage, but in this case, not the lord, but the nearest relation to whom the inheritance could not descend, was entitled to the custody of the person and estate of the heir till he attained the age of fourteen years; at which period the wardship ceased and the guardian was bound, to account. Wardship in copyhold estates partook of that in chivalry and that guardian like the latter, he was required lib. 7, c. 9; Grand Cout. c. 33; Reg. Maj. c. 42.

WAREHOUSE. A place adapted to the reception and storage of goods and merchandise. 9 Shepl. 47.

2. The act of congress of February 25, 1799, 1 Story's Laws U. S. 565, authorizes the purchase of suitable warehouses, where goods may be unladen and deposited from any vessel which shall be subject to quarantine or other re−straint, pursuant to the health laws of any state, at such convenient place or places as the safety of the revenue and the observance of such health laws may require.

3. And the act of 2d March, 1799, s. 62, 1 Story's Laws U. S. 627, authorizes an importer of goods, instead of, securing the duties to be paid to the United States, to deposit so much of such goods as the collector may in his judgment deem sufficient security for the duties and the charges of safe keeping, for which the importer shall give his own bond; which goods shall be kept by the collector with due care, at the expense and risk of the party on whose account they have been deposited, until the sum specified, in such bond becomes due; when, if such sum shall not be paid, so much of such deposited goods shall be sold at public sale, and the proceeds, charges of safe keeping and sale being deducted, shall be applied to the payment of such sum, rendering the overplus, and the residue of the goods so deposited, if there be any, to the depositor or his representatives.

WAREHOUSEMAN. A warehouseman is a person who receives goods and merchandise to be stored in his warehouse for hire.

2. He is bound to use ordinary care in preserving such goods and merchan−dise, and his neglect to do so will render him liable to the owner. Peake, R. 114; 1 Esp. R. 315; Story, Bailm. _444; Jones' Bailm. 49, 96, 97; 7 Cowen's R. 497; 12 John. Rep. 232; 2 Wend. R. 593; 9 Wend. R. 268; 1 Stew. Rep. 284. The warehouseman's liability commences as soon as the goods arrive, and the crane of the warehouse is applied to raise them into the warehouse. 4 Esp. R. 262.

WARRANDICE, Scotch law. A clause in a charter of heritable rights by which the grantor obliges himself, that the right conveyed shall be effectual to the receiver. It is either personal or real. A warranty. Ersk. Pr. B. 2, t. 3, n. 11.

WARRANT, crim. law, Practice. A writ issued by a justice of the peace or other authorized officer, directed to a constable or other proper person, requiring him to arrest a person therein named, charged with committing some offence, and to bring him before that or some other justice of the peace.

2. It should regularly be made under the hand and seal of the justice and dated. No warrant ought to be issued except upon the oath or affirmation of a witness charging the defendant with, the offence. 3 Binn. Rep. 88.

3. The reprehensible practice of issuing blank warrants which once prevailed in England, was never adopted

here. 2 Russ. on Cr. 512; Ld. Raym. 546; 1 Salk. 175; 1 H. Bl. R. 13; Doct. Pl. 529; Wood's Inst. 84; Com. Dig. Forcible Entry, D 18, 19; Id. Imprisonment, H 6,; Id. Pleader, 3 K 26; Id. Pleader, 3 M 23. Vide Search warrant.

4. A bench warrant is a process granted by a court authorizing a proper officer to apprehend and bring before it some on charged with some contempt, crime or misdemeanor. See Bench warrant.

5. A search warrant is a process issued by a competent court or officer authorizing an officer therein named or described, to examine a house or other place for the purpose of finding goods which it is alleged have been stolen. See Search warrant.

WARRANT OF ATTORNEY, practice. An instrument in writing, addressed to one or more attorneys therein named, authorizing them generally to appear in any court, or in some specified court, on behalf of the person giving it, and to confess judgment in favor of some particular person therein named, in an action of debt, and usually containing a stipulation not to bring any writ of error, or file a bill in equity, so as to delay him.

2. This general authority is usually qualified by reciting a bond which commonly accompanies it, together with the condition annexed to it, or by a written defeasance stating the terms upon which it was given, and restraining the creditor from making immediate use of it. 31. In form it is generally by deed; but it seems, it need not necessarily be so. 5 Taunt. 264.

4. This instrument is given to the creditor as a security. Possessing it, he may sign judgment and issue an execution, without its being necessary to wait the termination. of an action. Vide 14 East, R. 576; 2 T. R. 100; 1 H. Bl. 75; 1 Str 20; 2 Bl. Rep. 1133; 2 Wils. 3; 1 Chit. Rep. 707.

5. A warrant of attorney given to confess a judgment is not revocable, and, notwithstanding a revocation, judgment may be entered upon it. 2 Ld. Raym. 766, 850; 1 Salk. 87; 7 Mod. 93; 2 Esp, Rep. 563. The death of the debtor is, however, generally speaking, a revocation. Co. Litt. 62 b; 1 Vent. 310. Vide Hall's Pr. 14, n.

6. The virtue of a warrant of attorney is spent by the entry of one judgment, and a second judgment entered on the same warrant is irregular. 1 Penna. R. 245; 6 S. & R. 296: 14 S. & R. 170; Addis. R. 267; 2 Browne's R. 321, 3 Wash. C. C. R. 558. Vide, generally, 18 Eng. Com. Law Rep. 94, 96, 179, 209; 1 Salk. 402; 3 Vin. Ab. 291; 1 Sell. Pr. 374; Com. Dig. Abatement, E 1, 2; Id. Attorney, B 7, 8; 2 Archbold's Pr. 12; Bingh. on Judgments, 38; Grah. Pr. 618; l Crompt. Pr. 316; 1 Troub. & Haly's Pr. 96.

7. A warrant of attorney differs from a cognovit, actionem. (q. v.) See Metc. & Perk. Dig. Bond, IV.

WARRANTEE. One to whom a warranty is made. Touchst. 181.

WARRANTIA CHARTAE. An ancient and now obsolete writ, which was issued when a man was enfeoffed of land with warranty, and then he was sued or impleaded in assize or other action, in which he could not vouch or call to warranty.

2. It was brought by the feoffor pending the first suit against him, and had this valuable incident, that when the warrantor was vouched, and judgment passed against the tenant, the latter obtained judgment simultaneously against the warrantor, to recover other lands of equal value. Termes de la Ley, h. t.; F. N. B. 134; Dane's Ab. Index, h. t.; Rand. 141, 148, 156; 4 Leigh's R. 132; 11 S. & R. 115 Vin. Ab. h. t. Co. Litt. 100; Hob. 22, 217.

WARRANTOR. One who makes a warranty. Touchst, 181.

WARRANTY, contracts. This word has several significations, as it is applied to the conveyance and sale of lands, to the sale of goods, and to the contract of insurance.

2. − 1. The ancient law relating to warranties of land was full of subtleties and intricacies; it occupied the attention of the most eminent writers on the English law, and it was declared by Lord Coke, that the learning of warranties was one of the most curious and cunning learnings of the law; but it is now of little use even in England. The warranty was a covenant real, whereby the grantor of an estate of freehold, and his heirs, were bound to warrant the title; and either upon voucher, or judgment in, a writ of warrantia chartae, to yield other lands to the value of those from which there had been an eviction by paramount title Co. Litt. 365; Touchst.; 181 Bac. Ab. h. t.; the heir of the warrantor was bound only on condition that he had, as assets, other lands of equal value by descent.

3. Warranties were lineal and collateral.

4. Lineal, when the heir derived title to the land warranted, either from or through the ancestor who made the warranty.

5. Collateral warranty was when the heir's title was not derived from the warranting ancestor, and yet it barred the heir from claiming the land by any collateral title, upon the presumption that he might thereafter have assets by descent from or through the ancestor; and it imposed upon him the obligation of giving the warrantee other

lands, in case of eviction, provided he had assets. 2 Bl. Com. 301, 302.

6. The statute of 4 Anne, c. 16, annulled these collateral warrantees, which bid become a great grievance. Warranty in its original form, it is presumed, has never been known in the United States. The more plain and pliable form of a covenant has been adopted in its place and this covenant, like all other covenants, has always been held to sound in damages which after judgment may be recovered out of the personal or real estate, as in other cases. Vide 4 Kent, Com. 457; 3 Rawle's R. 67, n.; 2 Wheat−. R. 45; 9 Serg. & Rawle, 268; 11 Serg. & Rawle, 109; 4 Dall. Rep. 442; 2 Saund. 38, n. 5.

7. − 2. Warranties in relation, to the sale of personal chattels are of two kinds, express or implied.

8. An express warranty is one by which the warrantor covenants or undertakes to insure that the thing which is the subject of the. contract, is or is not as there mentioned; as, that a horse is sound; that he is not five years old.

9. An implied warranty is one which, not being expressly made, the law implies by the fact of the sale; for example, the seller is, understood to warrant the title of goods be sells, when they are in his possession at the time of the sale; Ld. Raym. 593; 1 Salk.. 210; but if they are not then in his possession, the rule of caveat emptor applies, and the buyer purchases at his risk. Cro. Jac. 197.

10. In general there is no implied warranty of the quality of the goods sold. 2 Kent, Com. 374; Co. Litt. 102, a; 2 Black Comm. 452; Bac. Abr. Action on the case E; 2 Com. Contr. 263; Dougl. 20; 2 East, 31 4; Id. 448, n.; Ross on Vend. c. 6; 1 Johns. R. 274; 4 Conn. R. 428; 1 Dall. Rep. 91; 10 Mass. R. 197; 20 Johns. Rep., 196; 3 Yeates, R. 262; 1 Pet. Rep. 317; 12 Serg. & Rawle, 181; 1 Hard. Kent. Rep. 531; 1 Murphy, Rep. 138; 2 Id. 245; 4 Haywood's Term. R. 227; 2 Caines' Rep. 48. The rule of the civil law was, that a fair price implied a warranty of title; Dig. 21, 2, 1; this rule, has been adopted in Louisiana; Code, art. .247 7; and in South Carolina. 1 Bay, R. 324; 2 Bay, R. 380 1 Const. R. 182; 2 Const. R. 353. Vide Harr. Dig. Sale, II. 8; 12 East, R. 452.

11. − 3. In the contract of insurance, there are certain warranties which are inducements to the insurer to enter into it. A warranty of this kind is a stipulation or agreement on the part of the insured, in the nature of a condition precedent. It may be affirmative; as where the insured undertakes for the truth of some positive allegation: as, that the thing insured is neutral property: or, it may be promissory; as, that the ship shall sail on or before a given day. 6 N. S. 53.

12. Warranties are also express or implied. An express warranty is a particular stipulation introduced into the written contract, by the agreement of the parties; an implied warranty is an agreement which necessarily results from the nature of the contract: as, that the ship shall be seaworthy when she sails on the voyage insured.

13. The warranty being in the nature of a condition precedent, it is to be performed by the insured, before he can demand the performance of the contract on the part of the insurer. Marsh. Inst. B. 1, c. 9. See, generally, Bouv. Inst. Index, h. t.

WARRANTY, VOUCHER TO, practice. A warranty is a contract real, annexed to lands and tenements, whereby a man is bound to defend such lands and tenements from another person; and in case of eviction by title paramount, to give him lands of equal value.

2. Voucher to warranty is the calling of such warrantor into court by the party warranted, (when tenant in a real action brought for recovery of such lands,) to defend the suit for him; Co. Litt. 101, b; Com. Dig. Voucher, A 1; Booth, 43 2 Saund. 32, n. 1; and the time of such voucher is after the deman−dant has counted. It lies in most real and mixed actions, but not in personal. Where the voucher has been made and allowed by the court, the vouchee either voluntarily appears, or there issues a judicial writ (called a summons ad warrantizandum,) commanding the sheriff to summon him. Where he, either voluntar−ily or in obedience to this writ, appears and offers to warrant the land to the tenant, it is called entering into the warranty; after which he is considered as tenant in the action, in the place of the original tenant. The deman−dant then counts against him de novo, the vouchee pleads to the new count, and the cause proceeds to issue. 2 Inst. 241 a; 2 Saund. 32, n. 1; Booth, 46.

3. Voucher of warranty is, in the present rarity of real actions, unknown in practice. Steph. Plead. 85.

WASTE. A spoil or destruction houses, gardens, trees, or other corporeal hereditaments, to the disherison of him that hath the remainder or reversion in fee simple or fee tail 2 Bl. Comm. 281.

2. The doctrine of waste is somewhat different in this country from what it is in England. It is adapted to our circumstances. 3 Yeates, R. 261; 4 Kent, Com. 76; Walk. Intr. 278; 7 John. Rep. 227; 2 Hayw. R. 339; 2 Hayw. R. 110; 6 Munf. R. 134; 1 Rand. Rep. 258; 6 Yerg. Rep. 334. Waste is either voluntary or permissive.

3. − _1. Voluntary waste. A voluntary waste is an act of commission, as tearing down a house. This kind of waste is committed in houses, in timber, and in land. It is committed in houses by removing wainscots, floors,

benches, furnaces, window−glass, windows, doors, shelves, and other things once fixed to the freehold, although they may have been erected by the lessee himself, unless they were erected for the purposes of trade. See Fixtures; Bac. Ab. Waste, C 6. And this kind of waste may take place not only in pulling down houses, or parts of them, but also in changing their forms; as, if the tenant pull down a house and erect a new one in the place, whether it be larger or smaller than the first; 2 Roll. Ab. 815 , 1. 33; or convert a parlor into a stable; or a grist−mill into a fulling−mill; 2 Roll. Abr. 814, 815; or turn two rooms into one. 2 Roll. Ab. 815, 1. 37. The building of a house where there was none before is said to be a waste; Co. Litt. 53, a; and taking it down after it is built, is a waste. Com. Dig. Waste, D 2. It is a general rule that when a lessee has annexed anything to the freehold during the term, and afterwards takes it away, it is waste. 3 East, 51. This principle is established in the French law. Lois des Bit. part. 2,

3, art. 1; 18 Toull. n. 457.

4. But at a very early period several exceptions were attempted to be made to this rule, which were at last effectually engrafted upon it in favor of trade, and of those vessels and utensils, which are immediately subservient to the purposes of trade. Ibid.

5. This relaxation of the old rule has taken place between two descriptions of persons; that is, between the landlord and tenant, and between the tenant for life or tenant in tail and the remainder−man or reversioner.

6. As between the landlord and tenant it is now the law, that if the lessee annex any chattel to the house for the purpose of his trade, he may disunite it during the continuance of his interest, 1 H. B. 258. But this relation extends only to erections for the purposes of trade.

7. It has been decided that a tenant for years may remove cider−mills, orna−mental marble chimney pieces, wainscots fixed only by screws, and such like. 2 Bl. Com. 281, note by Chitty. A tenant of a farm cannot remove buildings which he has erected for the purposes of husbandry, and the better enjoyment of the profits of the land, though he thereby leaves the premises the same as when he entered. 2 East, 88; 3 East, 51; 6 Johns., Rep. 5; 7 Mass. Rep. 433.

8. Voluntary waste may be committed on timber, and in the country from which we have borrowed our laws, the law is very strict. In Pennsylvania, however, and many of the other states, the law has applied itself to our situation, and those acts which in England would amount to waste, are not so accounted here. Stark. Ev. part 4, p. 1667, n.; 3 Yeates, 251. Where wild and uncultivated land, wholly covered with wood and timber, is leased, the lessee may fell a part pf the wood and timber, so as to fit the land for cultivation, without being liable to waste, but he cannot cut down the whole so as permanently to injure the inheritance. And to what extent the wood and timber on such land may be cut down without waste, is a question of fact for the jury under the direction of the court. 7 Johns. R. 227. The tenant may cut down trees for the reparation of the houses, fences, hedges, stiles, gates, and the like; Co. Litt. 53, b; and for mixing and repairing all instruments of husbandry, as ploughs, carts, harrows, rakes, forks, &c. Wood’s Inst. 344. The tenant may, when he is unrestrained by the terms of his lease, out down timber, if there be not enough dead timber. Com. Dig Waste, D 5; F. N. B. 59 M. Where the tenant, by the conditions of his lease, is entitled to cut down timber, he is restrained nevertheless from cutting down ornamental trees, or those planted for shelter; 6 Ves. 419; or to exclude objects from sight. 16 Ves. 375.

9. Windfalls are the property of the landlord, for whatever is severed by inevitable necessity, as by a tempest, or by a trespasser, and by wrong, belongs to him who has the inheritance. 3 P. Wms. 268; 11 Rep. 81, Bac. Abr. Waste, D 2.

10. Waste is frequently committed on cultivated fields, orchards, gardens, meadows, and the like. It is proper here to remark that there is an implied covenant or agreement on the part of the lessee to use a farm in a husbandman−like manner, and not to exhaust the soil by neglectful or improper tillage. 5 T. R. 373. See 6 Ves. 328. It is therefore waste to convert arable to woodland and the contrary, or meadow to arable; or meadow to orchard. Co. Lit. 53, b. Cutting down fruit trees; 2 Roll. Abr. 817, l. 30; although planted by the tenant himself, is waste; and it was held to be waste for an outgoing tenant of garden ground to plough up strawherry beds which be had bought of a former tenant when he entered. i Camp. 227.

11. It is a general rule that when lands are leased on which there are open mines of metal or coal or pits of gravel, lime, clay, brick, earth, stone, and the like, the tenant may dig out of such mines, or pits. Com. Dig. Waste, D 4. But he cannot open any new mines or pits without being guilty of waste Co. Lit. 53 b; and carrying away the soil, is waste. Com. Dig. Waste, D 4.

12. − _2. Permissive waste. Permissive waste in houses is punishable where the tenant is expressly bound to

repair, or where he is so bound on an implied covenant. See 2 Esp. R. 590; 1 Esp. Rep. 277; Bac. Abr. Covenant, F. It is waste if the tenant suffer a house leased to him to remain uncovered so long that the rafters or other timbers of the house become rotten, unless the house was uncovered when the tenant took possession. Com. Dig. Waste, D 2.

13. − _3. Of remedies for waste. The ancient writ of waste has been superseded. It is usual to bring case in the nature of waste instead of the action of waste, as well for permissive as voluntary waste.

14. Some decisions have made it doubtful whether an action on the case for permissive waste can be maintained against any tenant for years. See 1 New Rep. 290; 4 Taunt. 764; 7 Taunt. 392; S. C. 1 Moore, 100; 1 Saund. 323, a, n. i. Even where the lessee covenants not to do waste, the lessor has his election to bring either an action on the case, or of, covenant, against the lessee for waste done by him during the term. 2 Bl. Rep. 1111; 2 Saund. 252, c. n. In an action on the case in the nature of waste, the plaintiff recovers only damages for the waste.

15. The latter action has this advantage over an action of waste, that it may be brought by him in reversion or remainder for life or years, as well as in fee or in tail; and the plaintiff is entitled to costs in this action, which he cannot have in an action of waste., 2 Saund. 252, n. See, on the subject in general, Woodf. Landl. & T. 217, ch. 9, s. 1; Bac. Abr. Waste; Vin. Abr. Waste; Com. Dig. Waste; Supp. to Ves. jr. 50, 325, 441; 1 Vern. R. 23, n.; 2 Saund. 252, a, n. 7, 259, n. 11; Arch. Civ. Pl. 495; 2 Sell. Pr. 234; 3 Bl. Com. 180, note by Chitty; Anier. Dig. Waste; Whart. Dig. Waste; Bouv. Inst. Index, h. t.

As to remedies against waste by injunction, see 1 Vern. R. 23, n.; 5 P. Wms. 268, n. F; 1 Eq. Cas. Ab. 400; 6 Ves. 787, 107, 419; 8 Ves. 70; 16 Ves. 375; 2 Swanst. 251; 3 Madd. 498; Jacob's R. 70; Drew. on Inj. part 2, c. 1, p. 134. As between tenants in common, 5 Taunt. 24; 19 Ves. 159; 16 Ves. 132; 3 Bro. C. C. 622; 2 Dick. 667; Bouv. Inst. Index, h. t.; and the article Injunction. As to remedy by writ of estrepement to prevent waste, see Estrepement; Woodf Landl. & T. 447; 2 Yeates, 281; 4 Smith's Laws of Penn. 89; 3 Bl. Com. 226. As to remedies in cases of fraud in committing waste, see Hov. Fr. ch. 7, p. 226 to 238.

WASTE BOOK, com. law. A book used among merchants. All the dealings of the merchant are recorded in this book in chronological order as they occur.

WATCH, police. To watch is, properly speaking, to stand sentry and attend guard during the night time: certain officers called watchmen are appointed in most of the United States, whose duty it is to arrest all persons who are violating the law, or breaking the peace. (q. v.) Vide 1 Bl. Com. 356; 1 Chit. Cr. Law, 14, 20.

WATCH AND WARD. A phrase used in the English law, to denote the superinten−dence and care of certain officers, whose duties are to protect the public from harm.

WATCHMAN. An officer in many cities and towns, whose duty it is to watch during the night and take care of the property of the inhabitants.

2. He possesses generally the common law authority of a constable (q. v.) to make arrests, where there is reasonable ground to suspect a felony, though there is no proof of a felony having been committed. 1 Chit. Cr. L. 24; 2 Hale, 96; Hawk. B. 2, c. 13, s. 1, &c.; 1 East, P. C. 303; 2 Inst. 52; Com. Dig. Imprisonment, H 4; Dane's Ab. Index, h. t.; 3 Taunt. R. 14; 1 B. & A. 227; Peake, R. 89; 1 Moody's Cr. Cas. 334; 1 Esp. R. 294; and vide Peace.

3. By an act of congress, approved Sept. 30, 1850, the compensation of watchmen in the various departments of government, shall be five hundred dollars per annum.

WATER. That liquid substance of which the sea, the rivers, and creeks are composed.

2. A pool of water, or a stream or water course, is considered as part of the land, hence a pool of twenty acres, would pass by the grant of twenty acres of land, without mentioning the water. 2 Bl. Com. 18; 2 N. H. Rep. 255; 1, Wend. R. 255; 5 Paige, R. 141; 2 N. H. Rep. 371; 2 Brownl. 142; 5 Cowen, R. 216; 5 Conn. R. 497; 1 Wend. R. 237. A mere grant of water passes only a fishery. Co. Lit. 4 b.

3. Like land, water is distinguishable into different parts, as the sea, (q. v.) rivers, (q. v.) docks, (q. v.) canals, (q. v.) ponds, q v.) and sewers, (q. v.) and to these may be added at water course. (q. v.) Vide 4 Mason, R. 397 River; Water course.

WATER BAILIFF, English law. An officer appointed to search ships in ports. 10 H. vii., 30.

WATER COURSE. This term is applied to the flow or movement of the water in rivers, creeks, and other streams.

2. In a legal sense, property In a water course is comprehended under the general name of land; so that a grant of land conveys to the grantee not only fields, meadows, and the like, but also all the rivers and streams, which

naturally pass over the surface of the land. 1 Co. Lit. 4; 2 Brownl. 142; 2 N. Hamp. Rep. 255; 5 Wend. Rep. 128.

3. Those who own land bounding upon a water course, are denominated by the civilians riparian proprietors, and this convenient term has been adopted by judges and writers on the common law. Ang. on Water Courses, 3; 3 Kent, Com. 354; 4 Mason's R. 397.

4. Every proprietor of lands on the banks of a river has naturally an equal right to the use of the water which flows in the stream adjacent to his lands, as it was wont to run (currere solebat) without diminution or alteration.

5. No proprietor has a right to use the water to the prejudice of other proprietors, above or below him, unless he has a prior right to divert it, or a title to some exclusive enjoyment. He has no property in the water itself, but a simple usufruct as it passes along. Agua currit et debet currere, is the language of the law. 3 Rawle, Rep. 84; 9 Co. 57, b.

6. Though he may use the water while it runs over his lands, he cannot unreasonably detain it or give it another direction, and he must return it to its ordinary channel when it leaves his estate. Without the consent of the adjoining proprietors, he cannot divert or diminish the quantity of the water, which would otherwise descend to the proprietor below, nor throw the water back upon the proprietor above, without a grant, or an uninterrupted enjoyment of twenty years, which is evidence of it. 3 Kent, Com. 353; 1 Wils. R. 178; 6 East, 203; 1 Simon & Stuart, 190; 2 John. Ch R. 162, 463; 4 Mass. R. 401 17 John. R. 321; 5 Ohio R. 822; 3 Fairf. R. 407; 8 Greenl. R. 268; 16 Pick. Rep. 247; 1 Coxes Rep, 460; Dig. 39, 3, 4, and 10; Pothier, Traite du Contrat de Societe, 2e app. n. 236, 237; Bell's Law of Scotland, 691; Ang. on' Water Courses, 12; 2 Conn. R. 584.

7. When there are two opposite riparian proprietors, each owns that portion of the bed of the river which is adjoining his land usque ad filum aquae; or, in other words, to the thread or central line of the stream; Harg. Tracts, 5; Holt's Rep. 499; and if hydraulic works be erected on both banks, each is entitled to an equal share of the water. 1 Paige's Chanc. Rep. 448.

8. The water can only be used by each as an entire stream, in its natural channel; for of the property in the water there can be no severance. 13 John. R. 212.

9. But it seems that when an island is on the side of a river, so as to give the riparian owner on that side one−fourth of the water, the other is entitled to the whole of the three−fourths of the river. 10 Wend. Rep. 260. See, also, 13 Mass. Rep. 507; 2 Caines' Cas. 87; 9 Pick. R. 528; 3 Kent, Com. 344, 345; 3 Rawle's R. 84; 2 Watts, R. 327; 8 Greenl. R. 138, 253; 9 Pick. Rep. 59; 10 Pick. R. 348; 10 Wend. R. 167; Com. Dig. Action for Nuisance, A; 4 D. & R. 583; S. C. 2 B. & C. 910; 1 Campb. R. 463; 6 East, R. 208; 1 Wils. Rep. 174;; 1 B. & A. 258; 5 Taunt. R. 454; 2 Esp. R. 679; 2 Hill. Abr. c. 14, 16, 17; Ham. N. P. 199; 1 Vin. Ab. 557 22 Vin. Abr. 525; 2 Chit. Bl. 403, n. 7; 3 Roll. 140, l. 40; Lois des Bat. part 1, c. 3, sed. 1, art. 3; Crabb on R. P. _398 to 443. Vide River.

WATER ORDEAL. An ancient form of trial, now abolished, by which the accused, tied band and foot, were cast into cold water, and if they did not sink they were deemed innocent or they were compelled to plunge their limbs into hot water, and if they came out unhurt they were considered innocent. Vide Ordeal.

WAVESON. This name is given to such goods as after shipwreck appear upon the waves. Jacob, Law Dict. h. t.

WAY, estates. A passage, street or road. A right of way is a privilege which an individual or a particular description of persons, such as the inhabitants of a particular place, or the owners or occupiers of such place may have, of going over another person's ground.

2. It is an incorporeal hereditament of a real nature, a mere easement, entirely different from public or private roads.

3. A right of way may arise, 1. By prescription and immemorial usage. 2 McCord, 447 5 Har. & John. 474; Co. Litt. 113, b; Br. Chem. 2; 1 Roll. Ab. 936. 2. By grant. 3 Lev. 305; 1 Ld. Raym. 75; 17 Mass. 416; Crabb on R. P. _366. 3. By reservation 4. By custom. 5. By acts of the legislature. 6. From necessity, when a man's ground is enclosed and completely blocked up, so that he cannot, without passing over his neighbor's land, reach the public road. For example, should A grant a piece of land to B, surrounded by land belonging to A; a right of way over A's land passes of necessity to B, otherwise he could not derive any benefit from the acquisition. Vide 3 Rawle, 495; 2 Fairf. R. 1,56; 2 Mass. 203; 2 McCord, 448; 3 McCord, 139; 2 Pick. 577; 14 Mass. 56; 2 Hill, S. C. R. 641; and Necessity. The way is to be taken where it will be least injurious to the owner. 4 Kent, Com. 338. 4. Lord Coke, adopting the civil law, says there are three kinds of ways. 1. A foot−way, called iter. 2. A foot−way and horse−way, called adus. 3. A cart−way, which contains the other two, called via. Co. Lit. 56, a; Pothier, Pandectae, lib. 8, t. 3, _1; Dig. 8, 3; 1 Bro. Civ. Law, 177. Vide Yelv. 142, n; Id. 164; Woodf. Landl. & Ten. 544; 4 Kent, Com. 337; Ayl. Pand. 307; Cruise's Dig. tit. 24; 1 Taunt. R. 279; R. & M. 151; 1 Bail. R. 58; 2 Hill. Abr.

c. 6; Crabb on Real Prop. _360 to 397; Bouv. Inst. Index, h. t.; Easement; Servitude.

WAY BILL, contracts. A writing in which is set down the names of passengers, who are carried in a public conveyance, or the description of goods sent with a common carrier by land; when the goods are carried by water, the instrument is called a bill of lading. (q. v.)

WAY GOING CROP. In Pennsylvania, by the custom of the, country, a tenant for a term certain is entitled after the expiration of his Iease, to enter and take away the crop of grain which he had put into the ground the preceding fall. This is called the way going crop. 5 Binn. R. 289; 2 S. & R. 14; 1 P. R. 224.

WAYS AND MEANS. In legislative assemblies there is usually appointed a committee whose duties are to inquire into, and propose to the house, the ways and means to be adopted to raise funds for the use of the government. This body is called the committee of ways and means.

WEAR. A great dam made across a river, accommodated for the taking of fish, or to convey a stream to a mill. Jacob's Law Dict. h. t. Vide Dam.

WED. A covenant or agreement; whence a wedded husband.

WEEK. Seven days of time.

2. The week commences immediately after twelve o'clock, on the night between Saturday and Sunday, and ends at twelve o'clock, seven days of twenty−four hours each thereafter.

3. The first day of the week is called Sunday; (q. v.) the second, Monday; the third, Tuesday; the, fourth, Wednesday; the fifth, Thursday; the sixth, Friday; and the seventh, Saturday. Vide 4 Pet. S. C. Rep. 361.

WEIGHAGE, mer. law. In the English law it is a duty or toll paid for weighing merchandise; it is called tronage, (q. v.) for weighing wool at the king's beam, or pesage, for weighing other avoirdupois goods. 2 Chit. Com: Law, 16.

WEIGHT. A quality in natural bodies, by which they tend towards the centre of the earth.

2. Under the article Measure, (q. v.) it is said that by the constitution congress possesses the power "to fix the standard of weights and measures," and that this power has not been exercised.

3. The weights now generally used in the United States, are the same as those of England; they are of two kinds:

1. AVOIRDUPOIS WEIGHT.

1st. Used in almost all commercial transactions, and in the comwon dealings of life.

27 1/3 1/2 grains	=	1 dram
16 drams	=	1 ounce
16 ounces	=	1 pound, (lb.)
28 pounds	=	1 quarter, (qr.)
4 quarters	=	1 hundred weight, (cwt.)
20 hundred weight	=	1 ton.

2d. Used for meat and fish.

8 pounds	=	1 stone

3d. Used in the wool trade.

					Cwt.	qr.	lb.
7 pounds		=	1 clove				
14 pounds		=	1 stone	=	0	0	14
2 stones		=	1 tod	= 0	1	0	
6 1/2 tods		=	1 wey	=	1	2	14
2 weys	=	1 sack	= 3		1	0	
12 sacks		=	1 last	=	39	0	0

4th. Used for butter and cheese.

8 pounds	=	1 clove
56 pounds	=	1 firkin.

2. TROY WEIGHT.

24 grams	=	1 pennyweight
20 pennyweights	=	1 ounce
12 ounces	=	1 pound.

4. These are the denominations of troy weight, when used for weighing gold, silver and precious stones, except diamonds. Troy weight is also used by apo−thecaries in compounding medicines; and by them the ounce is divided into eight drams, and the drain into three scruples, so that the latter is equal to twenty grains. For scientific purposes, the grain only is used, and sets of weights are constructed in decimal progression, from 10,000 grains downward to one−hundredth of a grain. The caret, used for weighing diamonds, is three and one−sixth grains.

5. A short account of the French weights and measures is given under the article Measure.

WEIGHT OF EVIDENCE. This phrase is used to signify that the proof on one side, of a cause is greater than on the other.

2. When a verdict has been rendered against the weight of the evidence, the court may, on this ground, grant a new trial, but the court will exercise this power not merely with a cautious, but a strict and sure judgment, before they send the case to a second jury.

3. The general rule under such circumstances is, that the verdict once found shall stand: the setting aside is the exception, and ought to be an exception, of rare and almost singular occurrence. A new trial will be granted on this ground for either party; the evidence, however, is not to be weighed in golden scales. 2 Hodg. R. 125; S. C. 3 Bingh. N. C. 109; Gilp. 356; 4 Yeates, 437; 3 Greenl. 276; 8 Pick. 122; 5 Wend. 595; 7 Wend. 380; 2 Vir. Cas. 235.

WELCH MORTGAGE, Eng. law, contracts. A species of security which partakes of the nature of a mortgage, as there is a debt due, and an estate is given as a security for the repayment, but differs from it in the circumstances that the rents and profits are to be received without account till the principal money is paid off, and there is no remedy to enforce payment, while the mortgagor has a perpetual power of redemption.

2. It is a species of vivum vadium. Strictly, however, there is this distinction between a Welch mortgage and a vivum vadium. In the latter the rents and profits of the estate are applied to the discharge of the principal, after paying the interest; while in the former the rents and profits are received in satisfaction of his interest only. 1 Pow. Mortg. 373, a.

WELL. A hole dug in the earth in order to obtain water.

2. The owner of the estate has a right to dig in his own ground, at such a distance as is permitted by law, from his neighbor's land; he is not restric−ted as to the size or depth, and is not liable to any action for rendering the well of his neighbor useless by so doing. Lois des Bat. part. 1, c. 3, sect. 2, art. 2, _2.

WELL KNOWING. These words are used in a declaration when the plaintiff sues for an injury which is not immediate and with force, and the act or nonfea−sance complained of was not prima facie actionable, not only the injury, but the circumstances under which it was committed, ought to be stated, as where the injury was done by an animal. In such case, the plaintiff after stating the injury, continues, the defendant well knowing the mischievous propensity of his dog, permitted him to go at large. Vide Scienter.

WERE. The name of a fine among the Saxons imposed upon a murderer.

2. The life of every man, not excepting that of the king himself, was esti−mated at a certain price, which was called the were, or vestimatio capitis. The amount varied according to the dignity of the person murdered. The price of wounds was also varied according to the nature of the wound, or the member injured.

WERGILD, or WEREGILD, old Eng. law. The price which in a barbarous age, a person guilty of homicide or other enormous offence was required to pay, instead of receiving other punishment. 4 Bl. Com. 188. See, for the etymology of this word, and a tariff which was paid for the murder of the different classes of men, Guizot, Essais sur l'Histoire de France, Essai 4eme, c. 2, _2.

WETHER. A castrated ram, at least one year old in ark indictment it may be called a sheep. 4 Car. & Payne, 216; 19 Eng. Com. Law Rep. 351.

WHALER, mar. law. A vessel employed in the whale fishery.

2. It is usual for the owner of the vessel, the captain and crew, to divide the profits in just proportions, under an agreement similar to the contract Di Colonna. (q. v.)

WHARF. A space of ground artificially prepared for the reception of merchan−dise from a ship or vessel, so as to promote the convenient loading and discharge of such vessel.

WHARFAGE. The money paid for landing goods upon, or loading them from a wharf. Dane's Ab. Index, h. t.

WHARFINGER. One who owns or keeps a wharf, for the purpose of receiving and shipping merchandise to or from it, for hire.

2. Like a warehouseman, (q.v.) a wharfinger is responsible for ordinary neglect, and is therefore required to take ordinary, care of goods entrusted to him as such. The responsibility of a wharfinger begins when he acquires, and ends when he ceases to have the custody of the goods in that capacity.

3. When he begins and ceases to have such custody depends generally upon the usages of trade and of the business. When goods are delivered at a wharf, and the wharfinger has agreed, expressly or by implication, to take the custody of them, his responsibility commences; but a mere delivery at the wharf, without such assent, does not make him liable. 3 Campb. R. 414; 4 Campb. R. 72; 6 Cowen, R. 757. When goods are in the wharfinger's possession to be sent on board of a vessel for a voyage, as soon as he delivers the possession and the care of them to the proper officers of the vessel, although they are not actually removed, he is, by the usages of trade, deemed exonerated from any further responsibility. 5 Esp. R. 41; Story, Bailm. _453 Abbott on Shipp. 226; Molloy, B. 2. 2, s. 2; Roccus, Not. 88; Dig. 9, 4, 3.

WHEEL. The punishment of the wheel was formerly to put a criminal on a wheel, and then to break his bones until he expired. This barbarous punishment was never used in the United States, and it has been abolished in almost every civilized country.

WHELPS. The young of certain animals of a base nature, or ferae naturae.

2. It is a rule that when no larceny can be committed of any creatures of a base nature, which are ferae naturae, though tame and reclaimed, it cannot be committed of the young of such creatures in the nest, kennel, or den. 3 Inst. 109; 1 Russ. on Cr. 153.

3. The owner of the land is, however, considered to have a qualified property in such animals, ratione impotentia. 2 Bl. Com. 394.

WHEN. At which time, in wills, standing by itself unqualified and unexplained, this is a word of condition denoting the time at which the gift is to continence. 6 Ves. 243; 2 Meriv. 286.

2. The context of a will may show that the word when is to be applied to the possession only, not to the vesting of a legacy; but to justify this construction, there must be circumstances, or other expressions in the will, showing such to have been the testator's intent. 7 Ves. 422; 9 Ves. 230 Coop. 145; 11 Ves. 489; 3; Bro. C. C. 471. For the effect of the word when in contracts and in wills in the French law, see 6 Toull. n. 520.

WHEN AND WHERE. These words are used in a plea when full defence is made the form is, "when and were it shall behove him." This acknowledges the jurisdiction of the court. 1 Chit. Pl. *414.

WHEREAS. This word implies a recital, and in general cannot be used in the direct and positive averment of a fact in a declaration or plea. Those facts which are directly denied by the terms of the general issue, or which may, by the established usage of pleading, be specially traversed, must be averred in positive and direct terms; but facts, however material, which are not directly denied by the terms of the general issue, though liable to be contested under it, and which, according to the usage of pleading, cannot be specially tra−versed, may be alleged in the declaration by way of recital, under a whereas. Gould, Pl. c. 43, _42; Bac. Ab. Pleas, &c., B. 5, 4; 2 Chit. Pl. 151, 178, 191; Gould, Pl. c. 3, _47.

WHIPPING, punishment. The infliction of stripes.

2. This mode of punishment, which is still practiced in some of the states, is a relict of barbarism; it has yielded in most of the middle and northern states to the penitentiary system.

3. The punishment of whipping, so far as the same was provided by the laws of the United States, was abolished by the act of congress of February 28, 1839, s. 5. Vide 1 Chit. Cr. Law, 796; Dane's Ab. Index, h. t.

WHITE PERSONS. The acts of congress which authorize the naturalization of aliens, confine the description of such aliens to free white persons.

2. This of course excludes the African race when pure, but it is not easy to say what shade of color or mixture of blood will make a white person.

3. The constitution of Pennsylvania, as amended, confines the right of citi−zenship to free white persons; and these words, white persons, or similar words, are used in most of the constitutions of the southern states, in describing the electors.

WHITE RENT, English law. Rents paid in silver, and called white rents or redditus albi, to distinguish them from other rents which were not paid in money. 12 Inst. 19. Vide Alba firma.

WHOLE BLOOD. Being related by both the father and mother's side; this phrase is used in contradistinction to half, blood, (q. v.) which is relation only on one side. See Blood.

WHOLESALE. To sell by wholesale, is to sell by large parcels, generally in original packages, and not by retail. (q. v.)

WIDOW. An unmarried woman whose husband is dead.

2. In legal writings, widow is an addition given to a woman who is unmarried and whose husband is dead. The addition of spinster is given to a woman who never was married. Lovel. on Wills, 269. See Addition. As to the rights of a widow, seq Dower.

WIDOW'S CHAMBER, Eng. law. In London the apparel of a widow and the furniture of her chamber, left by her deceased husband, is so called, and the widow is entitled to it. 2 Bl. Com. 518.

WIDOWHOOD. The state of a man whose wife is dead or of a woman whose husband is dead. In general there is no law to regulate the time during whichh a man must remain a widower, or a woman a widow, before they marry a second time. The term widowhood is mostly applied to the state or condition of a widow.

WIDOWER. A man whose wife is dead. A widower has a right to administer to his wife's separate estate, and as her administrator to collect debts due to her, generally for his own use.

WIFE, domestic relations. A woman who has a husband.

2. A wife, as such, possesses rights and is liable to obligations. These will be considered. 1st. She may make contracts for the purchase of real estate for her own benefit, unless her husband expressly dissents. 6 Binn. R. 427. And she is entitled to a legacy directly given to her for her separate use. 6 Serg. & Rawle, R. 467. In some places, by statutory provision, she may act as a feme sole trader, and as such acquire personal property. 2 Serg. & Rawle, R. 289.

3. 2d. She may in Pennsylvania, and in most other states, convey her interest in her own or her husband's lands by deed acknowledged in a form prescribed by law. 8 Dowl. R. 630.

4. − 3d. She is under obligation to love, honor and obey her husband and is bound to follow him wherever he may desire to establish himself: 5 N. S. 60; (it is presumed not out of the boundaries of the United States,) unless the husband, by acts of injustice and such as are contrary to his marital duties, renders her life or happiness insecure.

5. − 4th. She is not liable for any obligations she enters into to pay money on any contract she makes, while she lives with her husband; she is presumed in such case to act as the agent of her husband. Chitty, Contr. 43

6. − 5th. The incapacities of femes covert, apply to their civil rights, and are intended for their protection and interest. Their political rights stand upon different grounds, they can, therefore, acquire and lose a national char− acter. These rights stand upon the general principles of the law of nations. Harp. Eq. R. 5 3 Pet. R. 242.

7. − 6th. A wife, like all other persons, when she acts with freedom, may be punished for her criminal acts. But the law presumes, when she commits in his presence a crime, not malum in se, as murder or treason, that she acts by the command and coercion of her husband, and, upon this ground, she is exempted from punishment. Rose. on Cr. Ev. 785. But this is only a presumption of law, and if it appears, upon the evidence, that she did not in fact commit the act under compulsion, but was herself a principal actor and inciter in it, she may be punished. 1 Hale, P. C. 516; 1 Russ. on Cr. 16, 20. Vide Contract; Divorce; Husband; Incapacity; Marriage; Necessaries; Parties to actions; Parties to contracts; Women and, generally, Bouv. Inst. Index,

WIFE'S EQUITY. By this phrase is understood the equitable right of a wife to have settled upon her and her children a suitable provision out of her estate whenever the husband cannot obtain it, without the aid of a court of equity. Shelf. on M. and D., 605.

2. By the marriage the husband acquires an interest in the property of his wife in consideration of the obligation which he contracts by the marriage, of maintaining her and their children. The common law enforces this duty thus voluntarily assumed by him, and he can alien the property to which he is thus entitled jure mariti, or in case of his bankruptcy or insolvency it would vest in his assignee for the benefit of his creditors, and the wife would be left with her children, entirely destitute, notwithstanding her fortune may have been great. To remedy this evil, courts of equity, in certain cases, give a provision to the wife, which is called the wife's equity.

3. The principle upon which courts of equity act is, that he who seeks the aid of equity must do equity, and that will be withheld until an adequate settlement has been made. 1 P. Wms. 459, 460. See 5 My. & Cr. 105; 11 Sim. 569; 4 Hare, 6.

4. It will be proper to consider, 1. Out of what property the wife has a right to claim her equity to a settlement. 2.

Against whom she may make such a claim. 3. Her rights. 4. The rights of her children. 5. When her rights to a settlement will be barred.

5. − 1. Where the property is equitable and not recoverable at law, it cannot be obtained without making a settlement upon a wife and children, if one be required by her 2 P. Wins. 639; and where, though the property be legal in its nature, it becomes, from collateral circumstances, the subject of a suit in equity, the wife's right to a settlement will attach. 5 My. & Cr. 97. See 2 Ves. jun., 607, 680; 4 Bro. C. C, 338; 3 Ves. 166, 421; 9 Ves. 87; 5 Madd. R. 149; 5 Ves. 517; 13 Maine, 124 10 Ala. R. 401; 9 Watts, 90; 5 John. Ch. R. 464; 3 Cowen, 591; 6 Paige, 366; 2 Bland. 545; 2 Paige, 303.

6. − 2. The wife's equity to a settlement is binding not only upon the husband, but upon his assignee under the bankrupt or insolvent laws. 2 Atk. 420; 3 Ves. 607; 4 Bro. C. C. 138; 6 John. Ch. R. 25; 1 Paige, 620; 4 Metc. 486; 4 Gill & John. 283; 5 Monr. 338; 10 Ala. R. 401 1 Kelly, 637. And even where the husband assigned the wife's equitable right for a valuable consideration, the assignee was considered liable. 4 Ves. 19.

7. − 3. As to the amount of the rights of the wife, the general rule is that one half of the wife's property shall be settled upon her. 2 Atk. 423; 3 Ves. 166. But it is in the discretion of the court to give her, an adequate settlement for herself and children. 5 John. Ch. R. 464; 6 John. Ch. R. 25; 3 Cowen, 591; 1 Desaus. 263: 2 Bland. 545; 1 Cox, R. 153; 5 B. Monr. 31; 3 Kelly, 193; 1 D, & W. 407; 9 Sim, 597; 1 S. & S. 250.

8. − 4. Whenever the wife insists upon her equity, the right will be exten−ded to her children, but the right is strictly personal to the wife, and her children cannot insist upon it after her death. 2 Eden, 337; 1 J. & W. 472; 1 Madd. R. 467; 11 Bligh, N. S. 104; 2 John. Ch. R. 206; 3 Cowen, 591; 10 Ala. R. 401; 1 Sanf. 129.

9. − 5. The wife's equity will be barred, first, by an adequate settlement having been made upon her; 2 Ves. 675; when she lives in adultery apart from her husband 4 Ves. 146; but a female ward of court, married without its consent, will not be barred, although she should be living in adultery. 1 V. & B. 302.

WILD ANIMALS. Animals in a state of nature; animals ferae naturae. Vide Animals; Ferae naturae.

WILFULLY, intentionally.

2. In charging certain offences it is required that they should be stated to be wilfully done. Arch. Cr. Pl. 51, 58; Leach's Cr. L. 556.

3. In Pennsylvania it has been decided that the word maliciously was an equivalent for the word wilfully, in an indictment for arson. 5 Whart. R. 427.

WILL, criminal law. The power of the mind which directs the actions of a man.

2. In criminal law it is necessary that there should be an act of the will to commit a crime, for unless the act is wilful it is no offence.

3. It is the consent of the will which renders human actions commendable or culpable, and where there is no win there can be no transgression.

4. The defect or want of will may be classed as follows: 1. Natural, as that of infancy. 2. Accidental; namely, 1st. Dementia. 2d. Casualty or chance. 3d. Ignorance. (q. v.) 3. Civil; namely, 1st. Civil subjection. 2d. Compulsion. 3d. Necessity. 4th. Well−grounded fear. Hale's P. C. c. 2 Hawk. P. C. book 1, c. 1.

WILL or TESTAMENT. The legal declaration of a man's intentions of what he wills to be performed after his death. Co. Litt. 111; Swinb. Pt. 1, s. II. 1; Shep. Touch. 398; Bac. Abr. Wills, A.

2. The terms will and testament are synonymous, and they are used indifferently by common lawyers, or one for the other. Swinb. p. 1, s. 1. 5; Bac. Ab. Wills. A. Civilians use the term testament only. See Testament.

3. There are five essential requisites to make a good will.

4. − 1. The testator must be legally capable of making a will. Generally all persons who may make valid contracts can dispose of their property by will. See Parties to contracts. This act requires a power of the mind freely to dispose of property. Infants, because of their tender age, and married women, on account of the supposed influence and control of their husbands, have no capacity to make a will, with these exceptions, that infants at common law may dispose of their personal estate, the males when over fourteen years of age, and the females when over twelve; this rule in relation to infants is not uniform in the United States. Swinb. p. 2, s. 2; Bac. Ab. Wills, B. Persons devoid of understanding, as idiots and lunatics, cannot make a will.

5. − 2. The testator at the time of making his will must have animum test−andi, or a serious intention to make such will. If a man therefore jestingly or boastingly and not seriously, writes or says that such a person shall have his goods or be his executor, this is no will. Bac. Ab. Wills, C; Com. Dig. Estates by Devise, D 1. See 4 Serg. & Rawle, 545; 2 Yeates, 324; 5 Binn. 490; 1 Des. R. 543.

6. − 3. The mind of the testator in making his will must be free, and not moved by fear, fraud or flattery. In such cases the will is void or at least voidable. Bac. Ab. Wills, C; see 3 Serg. & Rawle, 269. Vide influence.

7. − 4. There must be a person to take, capable of taking; for to render a devise or bequest valid there must be a donee in esse, or in rerum natura, and one that shall have capacity to take the thing given, when it is to vest, or the gift shall be void. Plowd. 345. See Legatee.

8. − 5. The will must be put in proper form., Wills are either written or nuncupative.

9. − 1. A will in writing must be, 1. Written on paper or parchment; it may be in any language, and in any character, provided it can be read or understood. 2. It must be signed by the testator or some person authorized by him; but a sealing has been held to be a sufficient signing. 2 Str. 764. But see 3 Lev. R. 1; 1 Const. R. 343; 18 Ves. R. 183; 2 Ball & B. 104 5 Mood. R. 484, and article To sign. And it ought to be signed by the attesting witnesses. In some states three witnesses are required, who should sign the will as such at the request and in the presence of the testator and of each other. This formality should generally be pursued, as the testator may have lands in such states which would not pass without it. See, as to the attestation of wills, Bac. Ab. Wills, D; Rob. on Wills, c. 1, part 15. 3. It must be published, that is, the testator must do some act from which it can be concluded that he intended the instrument to operate as his will. 6 Cruise, 79; 4 Burn's Eccl. Law, 119. As to the republication of wills, see Bac. Abr. Wills, D 3; and article Publication. 4. To make a good will of goods and chattels there must be an executor named in it, otherwise it will be a codocil only, and the party is said to die intestate; in such a case administration must be granted. Bac. Abr. Wills, D 2.

10. − 2. A nuncupative will or testament, is a verbal declaration by a tes−tator of his will before a competent number of legal witnesses.

11. Before the statute of frauds they were very common, but by that statute, 29 C. H. c. 3, which has been substantially adopted in a number of the states, these wills were laid under many restrictions. Vide Dane's Ab. chap. 127, a. 2; 3 Harr. & John. 208; 6 Munf. R. 123; 1 Munf. R. 456; 4 Hen. & Munf. 91−100.

12. In New York nuncupative wills have been abolished, except made by a soldier while in actual military service, or by a mariner while at sea. 2 New York Revised Statutes, 60, sec. 22. As to nuncupative wills in Louisiana, see Testament nuncupative; and Civil Code of Louisiana, article 1574.

13. It is a rule that the last will revokes all former wills. It follows then that a man cannot by any testamentary act impose upon himself the inability of making another inconsistent with and revoking the first will. Bac. Ab. Wills, E; Swinb. pt. 7, s. 14.

14. A will voluntarily and intentionally made by a competent testator, according to the form required by law, may be avoided, 1st. By revocation, see Revocation; Bac. Abr. Wills, G 1; Vin. Abr. Devise, P; 1 Rolle, Ab. 615; Com. Dig. Estates by Dev. F; and, 2d. By fraud.

15. Among the civilians they have two other kinds of wills, namely: the mystic, which is a will enveloped in a paper and sealed, and the witnesses attest that fact, the other is the olographic; which is wholly written by the testator himself. See Testament. As to wills and testaments, see Swinburne on Wills; Roberts on Wills; Lovelass on Wills; Roper on Legacies; Lowndes on Legacies; Will. on Ex. pt. 1; Vin. Abr. Devise; Rolle's Abr. Devise; Bac. Abr. Wills and Testaments; Com. Dig. Estates by Devise; Nels. Abr. h. t.; Amer. Dig. Wills; Whart. Dig. Wills; Toll. on Executors; Off. Ex.; Orph. Legacy; Touchst, ch. 23 Civil Code of Louisiana, B. 3, tit. 2; Bouv. Inst. Index, h. t.; and the articles Devise; Legacy; Testament.

WINCHESTER MEASURE. The standard measure originally kept at Winchester, in England.

WINDOW. An opening made in the wall of a house to admit light and air, and to enable those who are in to look out.

2. The owner has a right to make as many windows in his house when not built on the line of his property as he may deem proper, although by so doing be may destroy the privacy of his neighbors. Bac. Ab. Actions in general, B.

3. In cities and towns it is evident that the owner of a house cannot open windows in the partition wall without the consent of the owner of the adjoining property, unless he possesses the right of having ancient lights. (q. v.) The opening of such windows and destroying the privacy of the adjoining property, is not, however, actionable; the remedy against such encroachment is by obstructing them, without encroaching upon the rights of the party who opened them, so as to prevent a right from being acquired by twenty years use. 3 Camp. 82.

WISCONSIN. The name of one of the new states of the United States, of America.

2. The constitution of Wisconsin was adopted by a convention, at Madison, on the first day of February, 1848.

3. The right of suffrage is vested by the third article of the constitution, as follows: Sect. 1. Every male person of the age of twenty−one years or upwards, belonging to either of the following classes, who shall have resided in this state for one year next preceding any election, shall be deemed a qual−ified elector at such election. 1st. White citizens of the United States. 2d. White persons of foreign birth who shall have declared their intention to become citizens, conformably to the laws of the United States on the subject of naturalization. 3d. Persons of Indian blood who have once been declared by law of congress to be citizens of the United States, any subsequent act of congress to the contrary notwithstanding.

4th. Civilized persons of Indian descent, not members of any tribe; Provided, that the legislature may at any time extend by law the right of suffrage to persons not herein enumerated, but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election, and approved by a majority of all the votes cast at such election.

Sect. 2. No person under guardianship, non compos mentis, or insane shall be qualified to vote at any election; nor shall any person, convicted of treason or felony, be qualified to vote at any election, unless restored to civil rights.

Sect. 3. All votes shall be given by ballot, except for such township officers as may by law be directed or allowed to be otherwise chosen.

Sect. 4. No person shall be deemed to have lost his residence in this state by reason of absence on business of the United States or of this state.

Sect. 5. No soldier, seaman or marine, in the army or navy of the United States, shall be deemed a resident in this state, in consequence of being stationed within the same.

Sect. 6. Laws may be passed excluding from the right of suffrage all persons who have been, or may be convicted of bribery, or larceny, or any infamous crime, and depriving every person who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, of the right to vote at such election. 4, The fourth article vests the legislative power in a senate and assembly. These will be separately considered, by taking a view, 1. Of the senate. 2. Of the assembly.

5. − _1. The senate. It will be proper to examine, first, the qualification of the senators; secondly, the time of their election; third, the duration of their office fourth, the number of senators.

6. − 1. The senators must have resided one year within the state, and be qualified electors in the district which they may be chosen to represent. Sect. 6.

7. − 2. Senators are elected on the Tuesday following the first Monday of November by the qualified electors of the several districts. One half every year.

8. − 3. They hold their office for two years.

9. − 4. The senate shall consist of a number of members not more than one−third, nor less than one−fourth of the number of the members of the assembly. Sect. 2.

10. − _2. The assembly will be, considered in the same order.

11. − 1. Members of the assembly must have resided one year in the state, and be qualified electors for the district for which they may be chosen.

12. − 2. Members of the assembly are elected at the same time senators are elected.

13. − 3. They are elected annually.

14. − 4. The number of members of the assembly shall never be less than fifty−four nor more than one hundred.

15. The two houses are invested severally with the following powers:

Sect. 7. Each house shall be the judge of the elections, returns and quali−fications of its own members; and a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Sect. 8. Each house may determine the rules of its own proceedings, punish for contempts and disorderly behaviour; and, with the concurrence of two−thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause.

Sect. 9. Each house shall choose its own officers, and the senate shall choose a temporary president when the lieutenant−governor shall not attend as president, or shall act as governor.

Sect. 10. Each house shall keep a journal of its proceedings and publish the same, except such parts as require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither

house shall, without the consent of the other, adjourn for more than three days.

16. By the fifth article, the executive power is vested in a governor.

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

18. − Sect. 2. No person, except a citizen of the United States, and a qua−lified elector of the state, shall be eligible to the office of governor or lieutenant governor.

19. − Sect. 3. The governor and lieutenant governor shall be elected by the qualified electors of the state, at the times and places of choosing members of the legislature. The persons respectively having the highest, number of votes for governor and lieutenant−governor shall be elected, but in case two or more shall have an equal and the highest number of votes for governor or lieutenant−governor, the two houses of the legislature, at its next annual session, shall forthwith, by joint ballot, choose one of the persons so having an equal and the higbest number of votes, for governor or lieutenant governor. The returns of election for governor or lieutenant governor shall be made in such manner as shall be provided by law.

20. − Sect. 4. The governor shall be commander−in−chief of the military. and naval forces of the state. He shall have power to convene the legislature on extra−ordinary occasions; and in case of invasion, or danger from the preva−lence of contagious disease at the seat of government, he may convene them at any other suitable place within the state. He shall communicate to the legislature at every session, the condition of the state; and recommend such matters to them for their consideration as he may deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws be faithfully executed.

21. − Sect. 5. The governor shall receive during his continuance in office an annual compensation of one thousand two hundred and fifty dollars.

22. − Sect. 6. The governor shall have the power to grant reprieves, commutations and pardons after conviction for all offences, except treason, and cases of impeachment, upon such conditions and with such restrictions and lim−itations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason he shall have the power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or re−prieve, with his reasons for granting the same.

23. − Sect. 7. In case of the impeachment of the governor, or his removal from office, death, inability from mental or physical disease, resignation or absence from the state, the powers and the duties of the office shall devolve upon the lieutenant−governor for the residue of the term, until the governor, absent or impeached, shall have returned, or the disability shall cease. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of the military force thereof, he shall continue commander−in−chief of the military force of the state.

24. − Sect. 8. The lieutenant−governor shall be president of the senate, but shall have only a casting vote therein. If during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or from mental or physical disease, become incapable of performing the duties of his office, or be absent from the state the secretary of state shall act as governor until the vacancy shall be filled, or the disability shall cease.

25. − Sect. 9. The lieutenant governor shall receive double the per them allowance of members of the senate, for every day’s attendance as president of the senate, and the same mileage as shall be allowed to members of the legislature.

26. − Sect. 10. Every bill which shall have passed the legislature, shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it, but if not, he shall return it with his objections to that house in which it shall have originated, who shall enter the objections It large upon the journal, and proceed to reconsider it. If after such reconsideration, two−thirds. of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two−thirds of the members present, it shall become a law. But in all such cases, the votes of both houses shall be determined by, yeas and nays, and the names of the members, voting for or against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted)

after it shall have been presented to him, the same shall be a law, unless the legislature shall by their adjournment prevent its return, in which case it shall not be a Iaw.

27. The seventh article establishes the judiciary as follows:

Sect. 1. The court for the trial of impeachments shall be composed of the senate. The house of representatives shall have the power of impeaching all civil officers of this state, for corrupt conduct in office, or for crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment. On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached until his acquittal. Before the trial of an impeachment, the members, of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence; and no person shall be convicted without a concurrence of two−thirds of the members present. Judgment in case of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold any office of honor, profit or trust under the state; but the party impeached shall be liable to indictment, trial and punishment according to law.

28. − Sect. 2. The judicial power of this state, both as to matters of law and equity, shall be vested in a supreme court, circuit courts, courts of probate, and in justices of the peace. The legislature may also vest such jurisdiction as shall be deemed necessary in municipal courts and shall have power to establish inferior courts in the several counties with limited civil and criminal jurisdiction: Provided, that the jurisdiction which may be vested in municipal courts shall not exceed, in their respective municipalities, that of circuit courts, in their respective circuits, as prescribed in this constitution: And that the legislature shall provide as well for the election of judges of the municipal courts, as of the judges of inferior courts, by the qualified electors of the respective jurisdictions. The term of office of the judges of the said municipal and inferior courts shall not be longer than that of the judges of the circuit court.

29. − Sect, 3. The supreme court, except in cases otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state; but in no case removed to the supreme court shall a trial by jury be allowed. The supreme court shall have a general superintending control over all inferior courts; it shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto certiorari, and other original and remedial writs, and to hear and determine the same.

30. − Sect. 4. For the term of five years and thereafter until the legislature shall otherwise provide, the judges of the several courts shall be judges of the supreme court, four of whom shall constitute a quorum, and the concurrence of a majority of the judges present shall be necessary to a decision. The legislature shall have power, if they should think it expedient and necessary to provide by law for the organization of a separate supreme court, with the jurisdiction and powers prescribed in this constitution, to consist of one chief justice and two associate justices, to be elected by the qualified electors of the state, at such time and in such manner as the legislature may provide. The separate supreme court, when so organized, shall not be changed or discontinued by the legislature; the judges thereof shall be so classified that but one of them shall go out of office at the same time, and the term of office shall be the same as provided for the judges of the circuit court. And whenever the legislature may consider it necessary to establish a separate supreme court, they shall have power to reduce the number of circuit court judges to four, and subdivide the judicial circuits, but no such subdivision or reduction shall take effect till after the expiration of the term of some one of the said judges, or till a vacancy occur by some other means.

31. Circuits are established, and they may be changed by the legislature.

Sec. 7. For each circuit there shall be a judge chosen by the qualified electors therein, who shall hold his office as is provided in this constitution until his successor shall be chosen and qualified, and after he shall have been elected, he shall reside in the circuit for which he was elected. One of said judges shall be designated as chief justice, in such manner as the legislature shall provide. And the legislature shall, at its first session, provide by law as well for the election of, as for classifying, the judges of the circuit court to be elected under this constitution, in such manner, that one of the said judges shall go out of office in two years, one in three years, one in four years, one in five years and one in six years, and thereafter the judge elected to fill the office, shall bold the same for six years.

32. − 8. The circuit courts shall have original jurisdiction in all matters civil and criminal within this state, not excepted in this constitution, and not hereafter prohibited by law, and appellate jurisdiction from all inferior courts and tribunals, and a supervisory control over the same. They shall also have the power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and all other writs necessary to carry into effect their

orders, judgments and decrees, and give them a general control over inferior courts and jurisdictions.

33. − Sect. 9. When a vacancy shall happen in the office of a judge of the supreme or circuit court, such vacancy shall be filled by an appointment of the governor, which shall continue until a successor is elected and qualified; and when elected, such successor shall hold his office the residue of the unexpired term. There shall be no election for a judge or judges at any general election for state or county officers, nor within thirty days either before or after such election.

34. − Sect. 10. Each of the judges of the supreme and circuit courts shall receive a salary, payable quarterly, of not less than one thousand five hundred dollars annually; they shall receive no fees of office or other compensation than their salaries; they shall hold no office of public trust, except a judicial office, during the term for which they are respectively elected, and all votes for either of them for any office except a judicial office, given by the legislature or the people, shall be void. No person shall be eligible to the office of judge who shall not at the time of his election be a citizen of the United States, and have attained the age of twenty−five years, and be a qualified elector within the jurisdiction for which he may be chosen.

35. − Sect. 11. The supreme court shall hold at least one term annually at the seat of government of the state at such times as shall be provided by law, and the legislature may provide for holding other terms, and at other places when they may deem it necessary. A circuit court shall be held at least twice a year, in each county of this state, organized for judicial purposes. The judges of the circuit court may hold courts for each other, and shall do so when required by law.

WISTA. Among the Saxons, this was a measure of land; it contained a half hide, or sixty acres.

TO WIT. To know, that is to say, namely. See Scilicet.

WITH STRONG HAND, pleading. This is a technical phrase indispensable in describing a forcible entry in an indictment. No other word or circumlocution will answer the same purpose. 8 T. R. 357.

WITHDRAWING A JUROR, practice. An agreement made between the parties in a suit to require one of the twelve juror's impanneled to try a cause to leave the jury box; the act of leaving the box by such a juror is also called the withdrawing a juror.

2. This arrangement usually takes place at the recommendation of the judge, when it is obviously improper the case should proceed any further.

3. The effect of withdrawing a juror puts an end to that particular trial, and each party must pay his own costs. 3 T. R. 657; 2 Dowl. R. 721; S. C. 1 Crom. M. & R. 64.

4. But the plaintiff may bring a new suit for the same cause of an action. R. & M. 402; S. C. 21 E. C. L. R. 472; 3 Barn. & Adolph. 349; S. C. 23 E. C. L. R. 91. See 3 Chit. Pr. 916.

WITHERNAM, practice. The name of a writ which issues on the return of elon−gata to an alias or pluries writ of replevin, by which the sheriff is commanded to take the defendant's own goods which may be found in his bailiwick, and keep them safely, not to deliver them to the plaintiff until such time as the defendant chooses to submit himself, and allow the distress, and the whole of it, to be reprevied, and he is thereby further commanded that he do return to the court in what manner he shall have executed the writ. Hamm. N. P. 453; 2 Inst. 140; F. N. B. 68, 69; 19 Vin. Ab. 7; 7 Com. Dig. 674; Grotius, 3, 2, 4, n. 1.

WITHOUT, pleading. This word is adopted in formal traverses, and is a negative signifying "and not for;" accordingly the language of the elder entries sometimes is, It et nemy pur tiel cause," &c. Hamm. N. P. 120.

WITHOUT DAY. This signifies that the cause or thing to which it relates is indefinitely adjourned; as when a case is adjourned without day, it is not again to be inquired into; when the legislature adjourn without day they are not to meet again. This is usually expressed in Latin, sine die.

WITHOUT IMPEACHMENT OF WASTE. When a tenant for life holds the land without impeachment of waste, he is of course dispunishable for waste whether wilful or otherwise. But still this right must not be wantonly abused so as to destroy the estate, and he will be enjoined from committing malicious waste. Dane's Ab. c. 78, a. 14, _7; Bac. Ab. Waste, N; 2 Eq. Cas. Ab. tit. Waste, A. pl, 8; 2 Bouv. Inst. n. 2402. See Impeachment of Waste and Waste.

WITHOUT RECOURSE. Vide Sans Recours and Indorsement; Chit. on Bills, 179; 14 S. & R. 325; 3 Cranch, 193; 7 Cranch, 159; 1 Cowen, 538; 12 Mass. 172; 6 Shipl. R. 354.

WITHOUT RESERVE, contracts. These words are frequently used in conditions of sale at public auction, that the property offered, or to be offered for sale, will be sold without reserve.

2. When a property is advertised to be sold without reserve, if a puffer be employed to bid, and actually bid at

the sale, the courts will not enforce a contract against a purchaser, into which he may have been drawn by the vendor's want of faith. 5 Madd. R. 34. Vide Puffer.

WITHOUT THIS, THAT, pleading. These are technical words used in a traverse, (q. v.) for the purpose of denying a material fact in the preceding pleadings, whether declaration, plea, replication, &c. In Latin it is called absque hoc. (q. v.) Lawes on Pl. in Civ. Act. 119; Com. Dig. Pleader, G 1; Summary of Pleading, 75; 1 Saund. 103, n.; Ld. Raym. 641; 1 Burr. 320; 1 Chit. Pl. 576, note a.

WITNESS. One who, being sworn or affirmed, according to law, deposes as to his knowledge of facts in issue between the parties in a cause.

2. In another sense by witness is understood one who is called upon to be present at a transaction, as a wedding, or the making of a will. When a person signs his name to an instrument, as a deed, a bond, and the like, to signify that the same was executed in his presence, he is called an attesting witness.

3. The testimony of witnesses can never have the effect of a demonstration, because it is not impossible, indeed it frequently happens, that they are mistaken, or wish themselves to deceive. There can, therefore, result no other certainty from their testimony than what arises from analogy. When in the calm of the passions, we listen only to the voice of reason and the impulse of nature we feel in ourselves a great repugnance to betray the truth, to the pre−judice of another, and we have observes that honest, intelligent and disinterested persons never combine to deceive others by a falsehood. We conclude then, by analogy, with a sort of moral certainty, that a fact attested by several witnesses, worthy of credit, is true. This proof derives its whole force from a double presumption. We presume, in the first place, on the good sense of the witnesses that they have not been mistaken; and, secondly, we presume on their probity that they wish not to deceive. To be certain that they have not been deceived, and that they do not wish to mislead, we must ascertain, as far as possible, the nature and the quality of the facts proved; the quality and the person of the witness; and the testimony itself, by comparing it with the deposition of other witnesses, or with known facts. Vide Circumstances.

4. It is proper to consider, 1st. The character of the witness. 2d. The quality of the witness. 3d. The number of witnesses required by law.

5. − 1. When we are called upon to rely on the testimony of another in order to form a judgment as to certain facts, we must be certain, 1st. That he knows the facts in question, and that he is not mistaken; and, 2d. That he is disposed to tell the truth, and has no desire to impose on those who are to form a judgment on his testimony. The confidence therefore, which we give to the witness must be considered, in the first place, by his capacity or his organization, and in the next, by the interest or motive which he has to tell or not to tell the truth. When the facts to which the witness testifies agree with the circumstances which are known to exist, he becomes much more credible than when there is a contradiction in this respect. It is true that until impeached one witness is as good as another; but when a witness is impeached, although he remains competent, he is not as credible as before. Vide Circumstances; Competency; Credibility.

6. − 11. As to the quality of the witnesses, it is a general rule that all persons way be witnesses. To this there are various exceptions. A witness may be incompetent, 1. For want of understanding. 2. On account of interest. 3. Because his admission is contrary to public policy. 4. For want of religious principles; and, 5. On account of infamy.

7. − _1. Persons who want understanding, it is clear, cannot be witnesses, because they are to depose to facts which they know; and if they have no understanding, they cannot know the facts. There are two classes of persons of this kind.

8. − 1. Infants. A child of any age capable of distinguishing between good and evil may be examined as a witness; and in all cases, the examination must be under oath or affirmation. 1 Phil. Ev. 19; 1 Const. R. 354. This appears to be the rule in England; though formerly it was held by some judges that it was a presumption of law that the child was incompetent when he was under seven years of age. Gilb. Ev. 144; 1 East, R. 422; 1 East, P. C. 443; 1 Leach, 199. When the child is under fourteen, he is presumed incapable until capacity is shown; 2 Tenn. Rep. 80; 19 Mass. R. 225; and see 18 John. R. 105; when he is over fourteen he may be sworn without a previous examination. 2 South. R. 589.

9. − 2. Idiots and lunatics. An idiot cannot be examined as a witness, but a lunatic, (q. v.) during a lucid interval, (q. v.) may be examined. A person in a state of intoxication cannot be admitted as a witness. 15 Serg. & Rawle, 235. See Ray, Med. Jur. c. 22, _300 to 311.

10. − _2. Interest in the event of the suit excludes the witness from examination, unless under certain

circumstances. See article Interest. The exceptions are the cases of informers, (q. v.) when the statute makes them witnes−ses, although they may be entitled to a penalty; 1 Phil. Ev. 96; persons enti−tled to a reward, (q. v.) are sometimes competent; agents are also admitted in order to prove a contract made by them on the part of the principal, 1 Phil. Ev. 99; and see 1 John. Cas. 408; 2 John. Cas. 60; 2 John. R. 189; 13 Mass. R. 380; 11 Mass. R. 60; 2 Marsh. In 706 b; 1 Dall. R. 7; 1 Caines' R. 167. A mere trustee may be examined by either party. 1 Clarke, R. 281. An interested witness competency may be restored by a release. 1 Phil. Ev. 101. Vide, generally, 1 Day's R. 266, 269; 1 Caines' R. 276; 8 John. R. 518; 4 Mass. R. 488; 3 John. Cas. 82, 269; 1 Hayw. 2; 5 Halst. R. 297; 6 Binn. R. 319; 4 Binn. 83; 1 Dana's R. 181; 1 Taylor's R. 55; Bac. Ab. Evidence B; Bouv. Inst. Index, h. t.

11. − _3. There are some persons who cannot be examined as witnesses, because it is inconsistent with public policy that they should testify against certain persons; these are,

12. − 1. Husband and wife. The reason for excluding them from giving evidence, either for or against each other, is founded partly on their identity of interest, partly on a principle of public policy which deems it necessary to guard the security and confidence of private life, even at the risk of an occasional failure of justice. They cannot be witnesses for each other because their interests are absolutely the same; they are not witnesses against each other, because it is against the policy of marriage. Co. Litt. 6, b; 2 T. R. 265, 269; 6 Binn. 488. This is the rule when either is a party to a civil suit or action.

13. But where one of them, not being a party, is interested in the result, there is a distinction between the giving evidence for and against the other. It is an invariable rule that neither of them is a witness for the other who is interested in the result, and that where the husband is disqualified by his interest, the wife is also incompetent. 1 Ld. Raym. 744; 2 Str. 1095; 1 P. Wms. 610.

14. On the other hand, where the interest of the husband, consisting in a civil liability, would not have protected him from examination, it seems that the wife must also answer, although the effect may be to subject her husband to an action. This case differs very materially from those where the husband himself could not have been examined, either because he was a party or because he would criminate himself. The party to whom the testimony of the wife is essential, has a legal interest in her evidence; and as he might insist on examining the husband, it would, it seems, be straining the rule of policy too far to deprive him of the benefit of the wife's testimony. In an action for goods sold and delivered, it has been held that the wife of a third person is competent to prove that the credit was given to her husband. 1 Str. 504; B. N. P. 287. See 1 H. & M. 154; 11 Mass. 286; 1 Har. & J. 478; 1 Tayl. 9; 6 Binn. 488; 1 Yeates; 390, 534.

15. When neither of them is either a party to the suit, nor interested in the general result, the husband or wife is, it seems, competent to prove any fact, provided the evidence does not directly criminate, or tend to criminate, the other. 2 T. R. 263.

16. It has been held in Pennsylvania that the deposition of a wife on her death−bed, charging her husband with murdering her, was good evidence against him, on his trial for murder. Addis. 332. On an indictment for a conspiracy in inveigling a young girl from her mother's house, and she being intoxicated, procuring the marriage ceremony to be recited between her and one of the de−fendants, the girl is a competent witness to prove the facts. 2 Yeates, 114.

17. See, as to the competency of a wife de facto, but not de jure, Stark. Ev, pt. 4, p. 711. And on an indictment for forcible entry, the wife of the prosecutor was examined as a witness to prove the force, but only the force. 1 Dall. 68.

18. 2. Attorneys. They cannot be examined as witnesses as to confidential communications which they have received from their clients, made while the relation of attorney and client subsisted. 3 Johns. Cas. 198. See 3 Yeates, 4. Communications thus protected must have been made to him as instructions ne−cessary for conducting the cause, and not any extraneous or impertinent matter; 3 Johns. Cas. 198; they must have been made to him in the character of a counsel and not as a friend merely; 1 Caines' R. 15 7; they must have been made while the relation of counsel and client existed, and not after. 13 John. Rep. 492. An attorney may be examined as to the existence of a paper entrusted to him by his client, and as to the fact that it is in his possession, but he cannot be compelled to produce it, or disclose its date or contents. 17 Johns. R. 335. See 18 Johns. R. 330. He may also be called to prove a collateral fact not entrusted to him by his client; as to prove. his client's handwriting. 19 Johns. R. 134: 3 Yeates, 4. He is a competent witness for his client, although his judgment fee depends upon his success; 1 Dall. 241; or he expects to receive a larger fee from his client if the latter succeeds. 4 S. & R. 82. In Louisiana, the reverse has been decided. It is there held that an attorney cannot become a witness for his client in a cause in

which he was employed, by renouncing his fee, and having his name struck off from the record, in that case. 3 N. S. 88. Vide Confidential Communications.

19. − 3. Confessors. In New York it has been held that a confessor could not be compelled to disclose secrets which he had received in auricular confession. City Hall Rec. 80 n. Vide Confessor; Confidential Communications.

20. − 4. Jurors. A juror is not competent to prove his own or the conduct of his fellow jurors to impeach a verdict they have rendered. 5 Conn. R. 348. See Coxe, R. 166, and article Grand Jury. And a judge in a cause which is on trial before him cannot be a witness, as he cannot decide on his own competency, nor on the weight of his own testimony, compared with that of another; 2 Mart. R. N. S. 312; 1 Greenl. Ev. _364.

21. − 5. Slaves. It is said that a slave could not be a witness at common law because of the unbounded influence his master had over him. 4 Dall. R. 145, note 1; but see 1 St. Tr. 113 Macnally's Ev. 156. By statutory provisions in the slave states, a slave is generally held incompetent in actions between white persons. See 7 Monr. R. 91; 4 Ham. R. 353; 5 Litt. R. 171; 3 Harr. & John. 97; 1 McCord, R. 430. In New York a free black man is competent to prove facts happening while he was a slave. 1 John. R. 508; see 10 John. R. 132.

22. − 6. A party to a negotiable instrument, is not allowed to give evidence to invalidate it. 1 T. R. 300. But the rule is confined to negotiable instruments. 1 Bl. R. 365. This rule does not appear to be very firmly established in England. In the state courts of some of the United States it has been adopted, and may now be considered to be law. 2 Dall. R. 194; ld. 196; 2 Binn. R. 154; 2 Dall. R. 242; 1 Cain. R. 258, 267; 2 Johns. R. 165; Id. 258; 1 John. R. 572; 3 Mass R. 559; Id. 565; Id. 27; Id. 31; 1 Day, R. 17; 6 Pet. 51; 8 Pet. 12; 5 Greenl. 374; 1 Bailey, 479; 2 Dall. 194. But flee 16 John. 70; 8 Wend. 90; 20 John. 285. The witness may however testify to subsequent facts, not tending to show that the instrument was originally invalid. Peake's N. P. C. 6. See 2 Wash. 63; 1 Hen. & Munf. 165, 166, 175; 1 Cranch, R. 194.

23. − _4. When the witness has no religious principles to bind his conscience, the law rejects his testimony; but there is not such defect of religious principles, when the witness believes in the existence of a God, who will reward or punish in this world or that which is to come. Willes' R. 550. Vide the article Infidel where the subject is more fully examined and Atheist; Future state.

24. − _5. Infamy (q. v.) is a disqualification while it remains.

25. − III. As to the number of witnesses, it is a general rule that one witness is sufficient to establish a fact, but to this there are exceptions, both in civil and criminal cases.

26. − 1. In civil cases. The laws of perhaps all the states of the Union require two witnesses and some require even more, to prove the execution of a last will and testament devising lands.

27. − 2. In criminal cages, there are several instances where two witnesses at least are required. The constitution of the United States, art. 3, s. 3, provides that no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court. In cases of perjury there must evidently be two witnesses, or one witness, and such circumstances as have the effect of one witness; for if there be but one witness, then there is oath against oath, and therefore uncertainty.

28. A witness may be compelled to attend court. In the first place a subpoena requiring his attendance must be served upon him personally, and on his neglect to attend, an attachment for contempt will be issued. See, generally, Bouv. Inst. Index, h. t.

WITNESS, AGED. It has been laid down as a rule that to be considered an aged witness, a person must be at least seventy years old. See Aged Witness.

WITNESS, GOING. A going witness is one who is about to leave the jurisdiction of the court in which a cause is depending. See Going Witness.

WITNESS INSTRUMENTARY, Scotch law. He who has attested a deed or other writing.

2. When witnesses attest a deed without knowing the grantor, and seeing him subscribe, or bearing him own his subscription, and the deed happens to be forged, the witnesses are declared accessory to forgery. Ersk. Pr. L. Scot, 4, 4, 37; 6 Hill, N. Y. Rep. 303.

WOMEN, persons. In its most enlarged sense, this word signifies all the females of the human species; but in a more restricted sense, it means all such females who have arrived at the age of puberty. Mulieris appellatione etiam virgo viri potens continetur. Dig. 50, 16, 13.

2. Women are either single or married. 1. Single or unmarried women have all the civil rights of men; they may therefore enter into contracts or engagements; sue and be sued; be trustees or guardians, they may be witnesses,

and may for that purpose attest all papers; but they are generally, not possessed of any political power; hence they cannot be elected representatives of the people, nor be appointed to the offices of judge, attorney at law, sheriff, constable, or any other office, unless expressly authorized by law; instances occur of their being appointed post−mistresses nor can they vote at any election. Wooddes. Lect. 31; 4 Inst. 5; but see Callis, Sew. 252; 2 Inst 34; 4 Inst. 311, marg.

3. − 2. The existence of a married woman being merged, by a fiction of law, in the being of her husband, she is rendered incapable, during the coverture, of entering into any contract, or of suing or being sued, except she be joined with her husband; and she labors under all the incapacities above mentioned, to which single women are subject. Vide Abortion; Contract; Divorce; Feminine; Foetus; Gender; Incapacity; Man; Marriage; Masculine; Mother; Necessaries; Parties to Actions Parties to Contracts; Pregnancy; Wife.

WOODGELD, old Eng. law. To be free from the payment of money for taking of wood in any forest. Co. Litt. 233 a. The same as Pudzeld. (q. v.)

WOODS, A piece of land on which forest trees in great number naturally grow. According to Lord Coke, a grant to another of omnes boscos suos, all his woods, will pass not only all his trees, but the land on which they grow. Co. Litt. 4 b.

WORD, construction. One or more syllables which when united convey an idea a single part of speech.

2. Words are to be understood in a proper or figurative sense, and they are used both ways in law. They are also used in a technical sense. It is a general rule that contracts and wills shall be construed as the parties understood them; every person, bowever, is presumed to understand the force of the words be uses, and therefore technical words must be taken according to their legal import, even iii wills, unlesh the testator manifests a clear intention to the contrary. 1 Bro. C. C. 33; 3 Bro. C. C. 234; 5 Ves. 401 8 Ves. 306.

3. Every one is required to use words in the sense they are generally understood, for, as speech has been given to man to be a sign of his thoughts, for the purpose of communicating them to others, he is bound in treating with them, to use such words or signs in the sense sanctioned by usage, that is, in the sense in which they themselves understand them, or else he deceives them. Heinnec. Praelect. in Puffendorff, lib. 1, cap. 17, _2 Heinnec. de Jure Nat. lib. 1, _197; Wolff, lust. Jur. Nat. _7981.

4. Formerly, indeed, in cases of slander, the defamatory words received the mildest interpretation of which they were susceptible, and some ludicrous decisions were the consequence. It was gravely decided, that to say of a merchant, "he is a base broken rascal, has broken twice, and I will make him break a third time," that no action could be maintained, because it might be intended that he had a hernia: ne poet dar porter action, car poet estre intend de burstness de belly. Latch, 104. But now they are understood in their usual signification. Comb. 37; Ham. N. P. 282. Vide Bouv. Inst. Index, h. t.; Construction; Interpretation.

WORK AND LABOR. In actions of assumpsit, it is usual to put in a count, commonly called a common count, for work and labor done, and materials furnished by the plaintiff for the defendant; and when the work was not done under a special contract, the plaintiff will be entitled to recover on the common count for work, labor, and materials. 4 Tyr. R. 43; 2 C. & M. 214. Vide Assumpsit; Quantum meruit.

WORKHOUSE. A prison where prisoners are kept in employment; a penitentiary. A house provided where the poor are taken care of, and kept in employment.

WORKING DAYS. In settling laydays, (q. v.) or days of demurrage, (q. v.) sometimes the contract specifies working days in the computation, Sundays and custom−house holidays are excluded. 1 Bell’s Com. 577, 5th ed.

WORKMAN. One who labors, one who is employed to do business for another.

2. The obligations of a workman are to perform the work he has undertaken to do; to do it in proper time; to do it well to employ the things furnished him according to his contract.

3. His rights, are to be paid what his work is worth, or what it deserves; to have all the facilities which the employer can give him for doing his work. 1 Bouv. Just. n. 1000 to 1006.

WORSHIP. The honor and homage rendered to the Creator.

2. In the United States, this is free, every one being at liberty to worship God according to the dictates of his conscience. Vide Christianity; Religious test.

WORSHIP, Eng. law. A title or addition given to certain persons. 2 Inst. 666; Bac. Ab. Misnomer, A 2.

WORTHIEST OF BLOOD. All expression to designate that, in descent, the sons are to be preferred to daughters, which is the law of England. See some singular reasons given for this, in Plowd. 305.

WOUND, med. jur. This term, in legal medicine, comprehends all lesions of the body, and in this it differs from

the meaning of the word when used in surgery. The latter only refers to a solution of continuity, while the former comprises not only these, but also every other kind of accident, such as bruises, contusions, fractures, dislocations, and the like. Cooper's Surgical Dict. h. t.; Dunglison's Med. Dict. h. t.; vide Dictionnaire des Sciences Medicales, mot Blessures 3 Fodere, Med. Leg. _687−811.

2. Under the statute 9 Geo. IV. c. 21, sect. 12, it has been held in England, that to make a wound, in criminal cases, there must be "an injury to the person by which the skin is broken." 6 C. & P. 684; S. C. 19 Engl. C. L. Rep. 526. Vide Beck's Med. Jur. c. 15; Ryan's Med. Jur. Index, h. t.; Roscoe's Cr. Ev. 652; 19 Engl. Com. L. Rep. 425, 430, 526, 529; Dane's Ab. Index, h. t.; 1 Moody's Cr. Cas. 278; 4 C. & P. 381; S. C. 19 E. C. L. R. 430; 4 C. & P. 446; S. C. 19 E. C. L. R. 466; 1 Moody's Cr. C. 318; 4 C. & P. 558; S. C. 19 E. C. L. R. 526; Carr. Cr. L. 239; Guy, Med. Jur. ch. 9, p. 446; Merl. Repert. mot Blessure.

3. When a person is found dead from wounds, it is proper to inquire whether they are the result of suicide, accident, or homicide. In making the examination, the greatest attention should be bestowed on all the circumstances. On this subject some general directions have been given under the article Death. The reader is referred to 2 Beck's Med. Jur. 68 to 93. As to, wounds on the living body, see Id. 188.

WRECK, mar. law. A wreck (called in law Latin, wreccum maris, and in law French, wrec de mer,) signifies such goods, as after a shipwreck, are cast upon land by the sea, and left there within some county, so as not to belong to the jurisdiction of the admiralty, but to the common law. 2 Inst. 167; Bract. 1. 3, c. 3; Mirror, c. 1, s. 13, and c. 3.

2. The term 'wreck of the sea' includes, 1. Goods found at low water, between high and low water mark; and 2. Goods between the same limits, partly resting on the ground, but still moved by the water. 3 Hagg. Adm. R. 257.

3. When goods have touched the ground, and have again been floated by the tide, and are within low water mark; whether they are to be considered wreck will depend upon the circumstances whether they were, seized by a person wading, or swimming, or in a boat. 3 Hagg. Adm. R. 294. But if a human being, or even an animal, as a dog, cat, hawk, &c. escape alive from the ship, or if there be any marks upon the goods by which they may be known again, they are not, at common law, considered as wrecked. 5 Burr. 2738−9; 2 Chit. Com. Law, c. 6, p. 102; 2 Kent, Com. 292; 22 Vin. Ab. 535; 1 Bro. Civ. Law, 238; Park, Ins. Index, h. t.; Molloy, Jur. Mar. Index, h. t.

4. The act of congress of March 1, 1823, provides, _21, That, before any goods, wares or merchandise, which may be taken from any wreck, shall be admitted to an entry, the same shall be appraised in the manner prescribed in the sixteenth section of this act and the same proceedings shall be ordered and executed in all cases where a reduction of duties shall be claimed on account of damage which any goods, wares, or merchandise, shall have sustained in the course of the voyage and in all cases where the owner, importer, consignee, or agent, shall be dissatisfied with such appraisement, he shall be entitled to the privileges provided in the eighteenth section of this act. Vide Naufrage.

WRIT, practice. A mandatory precept issued by the authority, and in the name of the sovereign or the state, for the purpose of compelling the defendant to do something therein mentioned.

2. It is issued by a court or other competent jurisdiction, and is return−able to the same. It is to be under seal and tested by the proper officer, and is directed to the sheriff, or other officer lawfully authorized to execute the same. Writs are divided into, 1. Original. 2. Of mesne process. 3. Of execution. Vide 3 Bl. Com. 273; 1 Tidd, Pr. 93; Gould on Pl. c. 2, s. 1. There are several kinds of writs, some of which are mentioned below.

WRIT DE BONO ET MALO. An ancient writ which was issued in the case of each prisoner, instead of a general commission of general jail delivery for all the prisoners. This writ has not been used for a very long time, and is obsolete. 4 Bl. Com. 210.

WRIT OF CONSPIRACY. The name of an ancient writ, now superseded by the more convenient remedy of an action on the case, which might have been sued against parties guilty of a conspiracy. F. N. B. 260. See Conspiracy.

WRIT OF DECEIT. The name of a writ which lies where one man has done anything in the name of another, by which the latter is damnified and deceived. F. N. B. 217.

2. The modern practice is to sue a writ of trespass on the case to remedy the injury. See Deceit.

WRIT DE EJECTIONE FIRMAE. A writ of ejectment. Vide Ejectment, and 3 Bl. Com. 199.

WRIT DE HAERETICO COMBURENDO, Engl. law. The name of a writ formerly issued by the secular courts, when a man was turned over to them by the ecclesiastical tribunals, after having been condemned for heresy.

2. It was founded on the statute 2 Hen. IV. c. 15; it was first used, A. D. 1401, and as late as the year 1611. By virtue of this writ, the unhappy man against whom it was issued, was burned to death. See 12 Co. R. 92.

WRIT DE HOMINE RELEGIANDO, practice. A writ which lies to replevy a man out of prison, or out of the custody of any private person, in the same manner in which cattle taken in distress may be replevied, upon giving security to the sheriff that the man shall be forthcoming to answer to any charge against him.

2. This writ is almost entirely superseded by the more effectual writ of habeas corpus. 3 Bl. Com. 129; Com. Dig. Imprisonment, L 4; Lord Raym. 613; F. N. B. 66; 1 Atk. 633; 14 Vin. Ab. 305; Dane's Ab. h. t.; 7 Com. Dig. 271; 5 Binn. R. 304; 1 John. R. 23; 14 John. R. 263 2 Cain. C. Err. 322.

WRIT DE ODIO ET ATIA, Engl. law. This writ is probably obsolete, and superseded by the writ of habeas corpus. It was anciently directed to the sheriff, commanding him to inquire whether a prisoner charged with murder was committed upon just cause or suspicion, or merely propter odium et atiam, for hatred and ill−will; and, if upon the inquisition due cause of suspicion

did not appear, then there issued another writ for the sheriff to admit him to bail, 3 Bl. Com. 128; Com. Dig. Imprisonment, L 3.

WRIT OF COVENANTS, practice. A writ which lies where a party claims damage for breach of covenant, i. e. of a promise under seal.

WRIT OF DEBT, practice. A writ which lies where the party claims the re−covery of a debt, i. e. a liquidated or certain sum of money alleged to be due to him. This is debt in the debet, which is the principal and only common form. There is another species mentioned in the books, called the debt in the detinet, which lies for the specific recovery of goods, under a contract to deliver them. 1 Chit. Pl. 101.

WRIT OF DETINUE, practice. A writ which lies where a party claims the spe−cific recovery of goods and chattels, or deeds and writings detained from him. This is seldom used: trover is the more frequent remedy, in cases where it may be brought.

WRIT OF DOWER, practice. A writ which lies for a widow ciaiming the specific recovery of her dower, no part having been yet assigned to her. It is usually called a writ of dower unde nihil habet. 3 Chit. Pl. 393; Booth, 166.

2. There is another species, called a writ of right of dower, which applies to the particular case where the widow has received a part of her dower from the tenant himself, and of land lying in the same town in which she claims the residue. Booth, 166; Glanv. lib. 6, c. 4, 5. This latter writ is seldom used in practice.

WRIT OF EJECTMENT, practice. The name of a process issued by a party claiming land or other real estate, against one who is alleged to be unlawfully in possession. Vide Ejectment.

WRIT OF ENTRY, practice. A writ requiring the sheriff to command the tenant of land that he render to the demandant the premises in question, or to appear in court on such a day to show cause why he hath not done so. Co. Litt. 238. See 2 Pick. 473; 10 Pick. 359; 14 Mass. 20; 15 Mass. 305; 5 N. Hamp. R. 450; 6 N. Hamp. R. 555; 7 Pick. 36.

WRIT OF ERROR, practice. A writ issued out of a court of competent jurisdiction, directed to the judge of a court of record in which final judgment has been given, and commanding them, in some cases, themselves to examine the re−cord; in others to send it to another court of appellate jurisdiction, therein named, to be examined in order that some alleged error in the proceeding may be corrected. Steph. Pl. 138; 2 Saund. 100, n. 1; Bac. Ab. Error, in pr.

2. The first is called a writ of error coram nobis or vobis. When an issue in fact has been decided, there is not in general any appeal except by motion for a new trial; and although a matter. of fact should exist which was not brought into the issue, as for example, if the defendant neglected to Plead a release, which he might have pleaded, this is no error in the proceedings, though a mistake of the defendant. Steph. Pl. 139. But there are some facts which affect the validity and regularity of the proceeding itself, and to remedy these errors the party in interest may sue out the writ of error coram vobis. The death of one of the parties at the commencement of the suit; the appearance of an infant in a personal action, by an attorney, and not by guardian; the coverture of either party, at the commencement of the suit, when her husband is not joined with her, are instances of this kind. 1 Saund. 101; 1 Arch. Pr. 212; 2 Tidd’s Pr. 1033; Steph. Pl. 140 1 Browne’s Rep. 75.

3. The second species is called, generally, writ of error, and is the more common. Its object is to review and correct an error of the law committed in the proceedings, which is not amendable, or cured at common law, or by some of the statutes of amendment or jeofail. Vide, generally, Tidd’s Pr. ob. 43; Graham’s Pr. B. 4, o. 1; Bac. Ab. Error; 1 Vern. 169; Yelv. 76; 1 Salk. 322; 2 Saund. 46, n. 6, and 101, n. 1; 3 Bl. Com. 405; Serg. Const. Law, ch. 5.

4. In the French law the demande en cassation is somewhat similar to our proceeding in error; according to some of the best writers on French law, it is considered as a new suit, and it is less an action between the original parties, than a question between the judgment and the law. It is not the action which is to be judged, but the judgment; "la demande en cassation est un nouveau proces, bien moins entre les parties qui figuraient dans le premier, qu’entre l’arret et la loi." Henrion de Pansey, de l’Autorite judiciare dans les gouvernemens monarchiques, p. 270, edit. in 8vo.; 6 Toull. n. 193. Ce n’est point le’ proces qu’il s’agit de juger, mais le jugement. Ib.

5. A writ of error is in the nature of a suit or action, when it is to restore the party who obtains it to the possession of any thing which is withheld from him, not when its operation is entirely defensive. 3 Story. Const. _1721. And it is considered generally as a new action. 6 Port 9.

WRIT OF EXECUTION, practice. A writ to put in force the sentence that the law has given: it is addressed to

the Sheriff (and in the courts of the United States, to the marshal) commanding him, according to the nature of the case, either to give the plaintiff possession of lands; or to enforce the delivery of a chattel which was the subject of the action; or to levy for the plain−tiff, the debt, or damager, and costs recovered; or to levy for the defendant his costs; and that, either upon the body of the opposite party, his lands, or goods, or in some cases, upon his body, land, and goods; the extent and manner of the execution directed, always depending upon the nature of the judgment. 3 Bl. Com. 413.

2. Writs of execution are supposed to be actually awarded by the judges in court; but no such award is in general, actually made. The attorney, after signing final judgment, sues out of the proper office a writ of execution, in the form to which he conceives he would be entitled upon such judgment as he. has entered, if such entry has been actually made; and, if not made, then upon such as he thinks he is entitled to enter; and he does this, of course, upon peril that, if he takes a wrong execution, the proceeding is legal and void, and the opposite party entitled to redress. Steph. Pl, 137, 8. See Ca. Sa.; Execution; Fi. Fa.; Haberefa. possessionem; Vend. Exp.

WRIT OF EXIGI FACIAS. The name of a process issued in the course of proceedings in outlawry, and which immediately precedes the writ of capias agatum. See Exigent, or Exigi Facias.

WRIT OF FORMEDON, practice. This writ lies where a party claims the specific recovery of lands and tenements, as issue in tail; or as remainder−man or reversioner, upon the determination of an estate in tail. Co. Litt. 236 b; Booth, 139, 151, 154.

WRIT OF INQUIRY, practice. When in an action sounding in damages, (q. v.) as covenant, trespass, and the like, an interlocutory judgment is rendered, which is, that the plaintiff ought to recover his damages, without specifying the amount, it not yet being ascertained, the court does not in general undertake the office of assessing the damages, but issues a writ of inquiry, which is a writ directed to the sheriff of the county where the facts are alleged by the pleadings to have occured, commanding him to inquire into the amount of damages sustained "by the oath or affirmation of twelve good or lawful men of his county;" and to return such inquisition, when made, to the court.

2. The finding of the sheriff and jury under such a proceeding is called an inquisition. (q. v.)

3. The court will, on application, order that a writ of inquiry shall be executed before a judge, where it appears that important questions of law will arise. 2 John. R. 107.

4. When executed before the sheriff, he acts ministerially, and not judicially, and therefore, it may be executed before a deputy of the sheriff. 2 John R. 63. Vide Steph. Pl. 126; Grah. Pr. 639; 2 Archb. Pr. 19; Tidd’s Pr. 513; Yelv. 152, n.; 18 Eng. Com. Law Rep. 181, n., 189, n.; 1 Marsh. R. 129; l Sell. Pr. 346; Watson on Sher. 221; 2 Saund. 107, n. 2.

WRITS, JUDICIAL, practice. In England those writs which issue from the common law courts during the progress of a suit, are described as judicial writs, by way of distinction from the original one obtained from chancery. 3 Bl. Com. 282.

WRIT OF MAINPRIZE, English law. A writ directed to the sheriff (either gen−erally, when any man is imprisoned for a bailable offence, and bail has been refused; or specially, when the offence or cause of commitment is not properly bailable below) commanding him to take sureties for the prisoner’s appearance, commonly called mainpernors, and to set him at large. 3 B]. Com. 128. Vide Mainprize.

WRIT OF MESNE, Breve’ de medio, old English law. A writ which was so called, by reason of the words used in the writ, namely, Unde idem A qui medius est inter C et praefatum B; that is, A, who is mesne between C, the lord paramount, and B, the tenant paravail. Co. Litt. 100, a.

WRIT, ORIGINAL, practice, English law. An original writ is a mandatory letter issuing out of the court of chancery under the great seal and in a king’s name, directed to the sheriff of the county where the injury is alleged to have been committed, containing a summary statement of the cause of complaint, and requiring him in most cases, to command the defendant to satisy the claim; and, on his failure to comply, then to summon him to appear in one of the superior courts of common law, there to account for his non−compliance. In some cases, however, it omits the former alternative, and requires the sheriff simply to enforce the appearance. Steph. Pl. 5.

WRIT OF REPLEVIN, practice. The name of a process issued for the recovery of goods and chattels. Vide Replevin.

WRIT OF PRAECIPE. This writ is also called a writ of covenant, and is sued out by the party to whom lands are to be conveyed by fine; the foundation of which is a supposed agreement or covenant that the one shall convey the land to the other. 2 Bl. Com. 349, 350.

WRIT OF PREVENTION. This name is given to certain writs which may be issued in anticipation of suits which may arise. Co. Litt. 100. See Quia Timet.

WRIT OF RATIONABILI PARTE BONORUM. A writ which was sued out by a widow when the executors of her deceased husband refused to let her have a third part of her late husband's goods after the debts were paid. F. N. B. 284.

WRIT OF RESTITUTION. A writ which is issued on the reversal of a judgment, commanding the sheriff to restore to the defendant below, the thing levied upon, if it has not been sold, and if it has been sold, the proceeds. Bac. Ab. Execution, Q. Vide Restitution.

WRIT PRO RETORNO HABENDO, remedies, practice. The name of a writ which re−cites that the defendant was summoned to appear to answer the plaintiff in a plea whereof he took the cattle of the said plaintiff, specifying them, and that the said plaintiff afterwards made default, wherefore it was then considered that the said plaintiff and his pledges of prosecuting should be in mercy and that the said defendant should go without day, and that he should have re−turn of the cattle aforesaid. It then commands the sheriff, that he should cause to be returned the cattle aforesaid, to the said defendant without delay, &c. 2 Sell. Pr. 168. Vide Judgment in replevin.

WRIT OF PROCESS, Engl. law, pradice. If the defendant does not appear, in obedience to the original writ, there issue, when the time for appearance is past, other writs, returnable on some general return day in the term, called writs of process, enforcing the appearance of the defendant, either by attachment, or distress of his property, or arrest of his person, according to the nature of the case.

2. These differ from the original writ in the following particulars; they issue not out of chancery, but out of the court of common law, into which the original writ is returnable; and, accordingly, are not under the great seal, but the private seal of the court; and they bear teste in the named of the chief justice of that court, and not in the name of the king himself. It may also be observed, that in common with all other writs issuing from the court of common law, during the progress of the suit, they are described as judicial writs, by way of distinction from the original one obtained from the chancery. 4 Bl. Com. 282. See further, as to the nature of those writs, 1 Tidd's Pr. 106−193, 4th edit.; 1 Sellon's Pr. 64−102.

WRIT OF PROCLAMATION, Engl. practice. A writ which issues, at the same time with the exigi facias, by virtue of Stat. 31 Eliz. c. 3, s. 1, by which the sheriff is commanded to make proclamations in the statute prescribed.

2. When it is not directed to the same sheriff as the writ of exigi facias is, it is called a foreign writ of proclamation. Lee's Dict. of Pr.; 4 Reev. Inst. 261.

WRIT OF QUARE IMPEDIT, English law. The remedy by which, where the right of a party to benefice is obstructed, he recovers the presentation; and is the form of action now constantly adopted to try a disputed title to an advowson. Booth, 223 1 Arch. Civ. Pl. 434.

WRIT OF RECAPTION, practice. This writ lies where, pending an action of replevin, the same distrainor takes, for the same supposed cause, the cattle or goods of the same distrainee. See F. N. B. 169.

2. This writ is nearly obsolete, as trespass, which is found to be a pre−ferable remedy, lies for the second taking; and, as the defendant cannot justify, the plaintiff must necessarily recover damages proportioned to the injury.

WRIT OF RIGHT, practice. The remedly appropriate to the case where a party claims the specific recovery of corporeal hereditaments in fee simple; founding his title on the right of property, or mere right, arising either from his own seisin, or the seisin of his ancestor or predecessor. F. N. B. 1 B 3 Bl. Com. 391.

2. At common law, a writ of right lies only against the tenant of the free−hold demanded. 8 Cranch, 239.

3. This writ brings into controversy only the rights of the parties in the suit, and a defence that a third person has better title will not avail. Id.; 7 Wheat. 27; 3 Pet. 133. See 2 Wheat. 306; 4 Bing. N. S. 711; 3 Bing. N. S. 434; 4 Scott, R. 209; 6 Scott, R. 435; Id. 738; 1 Bing. N. S. 597; 5 Bing. N. S. 161; 6 Ad. & Ell. 103; 1 H. Bl. 1; 5 Taunt. R. 326; 1 Marsh. R. 68; 2 Bos. & P. 570; 1 N. R. 64; 4 Taunt. R. 572; 3 Bing. R. 167; 2 W. Bl. Rep. 1261; 1 B. & B. 17; 2 Car. & P. 187; Id. 271 Holt, R. 657; 8 Cranch, 229; 3 Fairf. 312; 7 Wend. 250; 3 Bibb, 57; 3 Rand. 568 2 J. J. Marsh. 104; 2 A. K. Marsh. 396; 1 Dana, 410; 2 Leigh, R. 1 4 Mass. 64; 17 Mass. 74.

WRIT OF TRESPASS, practice. This writ lies where a party claims damages for a trespass committed against his person, or tangible and corporeal property. See Trespass.

WRIT OF TRESPASS ON THE CASE, practice. A writ which lies where a party sues for damages for any wrong or cause of complaint to which covenant or trespass will not apply. See 3 Woodd. 167; Steph. Pl. 15.

2. This action originates in the power given by the statute of Westm. 2, to the clerks of chancery to frame new

writs in consimili casu with writs already known. Under this power they constructed many writs for different injuries, which were considered as in consimili casu, with, that is, to bear a certain analogy to a trespass. The new writs invented for the cases supposed to bear such analogy, have received, accordingly, the appellation of writs of trespass on the case, as being founded on the particular circumstances of the case thus requiring a remedy, and, to distinguish them from the old writ of trespass; 3 Reeves, 89, 243, 391; and the injuries themselves, which are the subjects of such writs, are not called trespasses, but have the general name of torts, wrong or grievances.

3. The writs of trespass on the case, though invented thus, pro re nata, in various forms, according to the nature of the different wrongs which respectively called them forth began nevertheless, to be viewed as constituting collectively a new individual form of action; and this new genus took its place, by the name of Trespass on the case, among the more ancient actions of debt, covenant, trespass, &c. Such being the nature of this action, it comprises, of course, many different species. There are two, however, of more frequent use than any other species of trespass on the case, or, perhaps, than any other firm of action whatever. These are assumpsit and trover. Steph. Pl. 15, 16.

WRIT OF TOLT, Eng. law. The name of a writ to remove proceedings on a writ of right patent from the court baron into the county court. 3 Bl. Commen−taries, App. No. 1, _2.

WRIT OF WASTE. The name of a writ to be issued against a tenant who has committed waste of the premises. There are several forms of this writ, that against a tenant in dower differs from the others. F. N. B. 125.

WRITING. The act of forming by the hand letters or characters of a particular kind on paper or other suitable substance, and artfully putting them together so as to co nvey ideas. It differs from printing, which is the formation of words on paper or other proper substance by means of a stamp. Sometimes by writing ii understood printing, and sometimes printing and writing mixed.

2. Many contracts are required to be in writing; all deeds for real estate must be in writing, for it cannot be conveyed by a contract not in writing, yet it is the constant practice to make deeds partly in printing, and partly in writing. Wills, except nuncupative wills, must begin writing, and signed by the testator; and nuncupative wills must be reduced to writing by the witnesses within a limited time after the testator's death.

3. Records, bonds, bills of exchange and many other engagements, must, from their nature, be made in writing, See Frauds, statute of; Language.

WRITING OBLIGATORY. A bond; an agreement reduced to writing, by which the party becomes bound to perform something, or suffer it to be done.

WRONG. An injury; (q. v.) a tort (q. v.) a violation of right. In its most usual sense, wrong signifies an injury committed to the person or property of another, or to his relative rights, unconnected with contract; and these wrongs are committed with or without force. But in a more extended signification, wrong includes the violation of a contract; a failure by a man to perform his undertaking or promise is a wrong or injury to him to whom it was made. 3 Bl. Com. 158.

2. Wrongs are divided into public and private. 1. A public wrong is an act which is injurious to the public generally, commonly known by the name of crime, misdemeanor, or offence, and it is punishable in various ways, such as indictments, summary proceedings, and upon conviction by death, imprisonment, fine, &c. 2. Private wrongs, which are injuries to individuals, unaffecting the public: these are redressed by actions for damages, &c.

WRONG−DOER. One who commits an injury, a tort−feasor. (q. v.) Vide Dane's Abridgment, Index, h. t.

WRONGFULLY INTENDING. These words are used in a declaration when in an action for an injury, the motive of the defendant in committing it can be proved, for then his malicious intent ought to be averred. This is sufficiently done if it be substantially alleged, in general terms, as wrongfully intending. 3 Bouv. Inst. n. 2871.

Y.

YARD. A measure of length, containing three feet, or thirty−six inches.

YARD, estates. A piece of land enclosed for the use and accommodation of the inhabitants of a house. In England it is nearly synonymous with backside. (q. v.) 1 Chitty, Pr. 176; 1 T. R. 701.

YARDLAND, old Eng. law. A quantity of land containing twenty acres. Co. Litt. 69 a.

YEAR. The period in which the revolution of the earth round the sun, and the accompanying changes in the order of nature, are completed.

2. The civil year differs from the astronomical, the latter being composed of 365 days, 5 hours, 48 seconds and a

fraction, while the former consists, sometimes of three hundred and sixty−five days, and at others, in leap years, of three hundred and sixty−six days.

3. The year is divided into half−year which consists, according to Co. Litt. 135 b, of 182 days; and quarter of a year, which consists of 91 days, Ibid. and 2 Roll. Ab. 521, 1. 40. It is further divided into twelve months.

4. The civil year commences immediately after twelve o'clock at night of the thirty−first day of December, that is the first moment of the first day of January, and ends at midnight of the thirty−first day of December, twelve mouths thereafter. Vide Com. Dig. Ann.; 2 Bl. Com. by Chitty, 140, n.; Chitt. Pr. Index tit. Time alteration of the calendar (q. v.) from old to new style in England, (see Bissextile,) and the colonies of that country in America, the year in chronological reckoning was supposed to cornmence with the first day of January, although the legal year did not commence until March 25th, the intermediate time being doubly indicated: thus February 15, 1724, and so on. This mode of reckoning was altered by the statute 24 Geo. II. cap. 23, which gave rise to an act of assembly of Pennsylvania, passed March 11, 1752; 1 Sm. Laws, 217, conforming thereto, and also to the repeal of the act of 1710.

5. In New York it is enacted that whenever the term "year" or "years" is or shall be used in any statute, deed, verbal or written contract, or any public or private instrument whatever, the year intended shall be taken to consist of three hundred and sixty−five days; half a year of a hundred and eighty−two days; and a quarter of a year of ninety−two days; and the day of a leap year, and the day immediately preceeding, if they shall occur in any period so to be computed, shall be reckoned together as one day. Rev. Stat. part 1, c. 19, t. 1, _3.

YEAR AND DAY. This period of time is particularly recognized in the law. For example, when a judgment is reversed, a party, notwithstanding the lapse of time mentioned in the statute of limitations pending that action, may commence a fresh action within a year and a day of such reversal; 3 Chitty, Pract. 107; again, after a year and a day have elapsed from the day of signing a judgment, no execution can be issued until the judgment shall have been revived by scire facias. Id. Bac. Ab. Execution, H; Tidd, Pr. 1103.

2. In Scotland, it has been decided that in computing the term, the year and day is to be reckoned, not by the number of days which go to make up a year, but by the return of the day of the next year that bears the same denomination. 1 Bell's Com. 721, 5th edit.; 2 Stair, 842. See Bac. Ab. Descent, I 3; Ersk. Princ. B. 1, t. 6, n. 22.

YEAR BOOKS. These were books of reports of cases in a regular series from tho reign of the English King Ed. 11. inclusive, to the time of Henry VIII, which were taken by the prothonotaries or chief scribes of the courts, at the expense of the crown, and published annually, whence their name Year Books. They consist of eleven parts, namely: Part 1. Maynard's Reports, temp. Edw. II.; also divers Memoranda of the Exchequer, temp. Edward I. Part 2. Reports in the first ten years of Edw. 111. Part. 3. Reports from l7 to 39 Edward III. Part 4. Reports from 40 to 50 Edward 111. Part 5. Liber Assisarum; or Pleas of the Crown, temp. Edw. III. Part 6. Reports temp. Hen. TV. and Hen. V. Parts 7 and 8. Annals, or Reports of Hen. VI. during his reign, in 2 vols. Part 9. Annals of Edward IV. Part 10. Long Quinto; or Reports in 5 Edward IV. Part 11. Cases in the reigns of Edward V, Richard III, Henry VII, and Henry VIII.

YEARS, ESTATE FOR. Vide Estate for Years.

YEAS AND NAYS. The list of members of a legislative body voting in the affirmative and negative of a proposition is so called.

2. The constitution of the United States, art. 1, s. 5, directs that "the yeas and nays of the members of either house, on any question, shall, at the desire of one−fifth of those present, be entered on the journal." Vide 2 Story, Cons. 301.

3. The power of calling the yeas and nays is given by all the constitutions of the several states, and it is not in general restricted to the request of one−fifth of the members present, but may be demanded by a less number and, in some, one member alone has the right to require the call of the yeas and nays.

YEOMAN. In the United States this word does not appear to have any very exact meaning. It is usually put as an addition to the names of parties in declarations and indictments. In England it signifies a free man who has land of the value of forty shillings a year. 2 Inst. 668; 2 Dall. 92.

YIELDING AND PAYING, contracts. These words, when used in a lease, constitute a covenant on the part of the lessee to pay the rent; Platt on Coven. 50; 3 Penna. Rep. 464; 1 Sid. 447, pl. 9; 2 Lev. 206; 3 T. R. 402; 1 Barn. & Cres. 416; S. C. 2 Dow. & Ry. 670; but whether it be an express covenant or not, seems not to be settled. Sty. 387, 406, 451; Sid. 240, 266; 2 Lev. 206; S. C., T. Jones, 102 3 T. R. 402.

2. In Pennsylvania, it has been decided to be a covenant running with the land. 3 Penna. Reports, 464. Vide 1

Saund. 233, n. 1; 9 Verm. R. 191.

YORK, STATUTE OF. The name of an English statute, passed 12 Edw. II., Anno Domini 1318, and so called because it was enacted at York. It contains many wise provisions and explanations of former statutes. Barr. on the Stat. 174. There were other statutes made at York in the reign of Edw. III., but they do not bear this name.

YOUNG ANIMALS. It is a rule that the young of domestic or tame animals belong to the owner of the dam or mother, according to the maxim Partus sequitur ventrem. Dig. 6, 1, 5, 2; Inst. 2, 1, 9.

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