FUTURE ACQUIRED PROPERTY. Mortgages, especially of corporations, are frequently made in terms to cover after acquired property; such as rolling stock, etc. Such mortgages are valid; 64 Penn. 366; 32 N. H. 484; 95 U. S. 10; L. R. 16 Eq. 383. This may include future net earnings; 15 Iowa, 284; the proceeds to be received from the sale of surplus lands; L. R. 2 Ch. 201; a ditch or flume in process of construction, which was held to cover all improvements and fixtures thereafter to be put on the line thereof; 26 Cal. 620; rolling stock, etc.; 64 Penn. 366; 49 Barb. 441. Future calls of assessments on stock cannot be mortgaged; L. R. 10 Eq. 681; but it has been held that calls already made could be; *id.*

FUTURE ADVANCES. See MORTGAGE.

FUTURE DEBT. In Scotch Law. A debt which is created, but which will not become due till a future day. 1 Bell, Com. 315.

FUTURE ESTATE. An estate which is to commence in possession in the future (*in futuro*). It includes remainders, reversions, and estates limited to commence *in futuro* without a particular estate to support them, which last are not good at common law, except in the case of terms for years. See 2 Bla. Com. 165. In New York law it has been defined "an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination by lapse of time, or otherwise, of a precedent estate created at the same time," thus excluding reversions, which cannot be said to be *created* at the same time, because they are a remnant of the original estate remaining in the grantor; 11 N. Y. Rev. Stat. 3d ed. 9, § 10.

FUTURI (Lat.). Those who are to be. Part of the commencement of old deeds. "*Sciant præsentes et futuri, quod ego, talis, dedi et concessi,*" etc. (Let all men now living and to come know that I, A B, have, etc.). Bracton, 34 *b*.

FYNDERINGA (Sax.). An offence or trespass for which the fine or compensation was reserved to the king's pleasure. Leges Hen. I. c. 10. Its nature is not known. Spelman reads *fynderinga*, and interprets it *treasure trove;* but Cowel reads *fyrderinga*, and interprets it a joining of the king's *fird* or host, a neglect to do which was punished by a fine called *firdnite*. See Cowel; Spelman, Gloss. Du Cange agrees with Cowel.

G.

G in Law French is often used at the beginning of words for the English W, as in *gage* for *wage*, *garranty* for *warranty*, *gast* for *waste*.

GABEL (Lat. *vectigal*). A tax, imposition, or duty. This word is said to have the same signification that *gabelle* formerly had in France. Cunningham, Dict. But this seems to be an error; for gabelle signified in that country, previous to its revolution, a duty upon salt. Merlin, Rép. Coke says that *gabel* or *gavel*, *gablum*, *gabellum*, *gabelletum*, *galbelletum*, and *gavillettum* signify a rent, duty, or service yielded or done to the king or any other lord; Co. Litt. 142 *a*. See GAVEL.

GABLUM (spelled, also, *gabulum*, *gabula*). The gable-end of a building. Kennett, Paroch. Antiq. p. 201; Cowel.

A tax. Du Cange.

GAFOL (spelled, also, *gabella*, *gavel*). Rent; tax; interest of money.

Gafol gild. Payment of such rent, etc. *Gafol land* was land liable to tribute or tax; Cowel; or land rented; Saxon Dict. See Taylor, Hist. of Gavelkind, pp. 26, 27, 1021; Anc. Laws & Inst. of Eng. Gloss.

GAGE, GAGER (Law Lat. *vadium*). Personal property placed by a debtor in possession of his creditor as a security for the payment of his debt; a pawn or pledge (*q.v.*). Granv. lib. 10, c. 6; Britton, c. 27.

To pledge; to wage. Webster, Dict.

Gager is used both as noun and verb: e. g. *gager del ley*, wager of law; Jacobs; *gager ley*, to wage law; Britton, c. 27; *gager deliverance*, to put in sureties to deliver cattle distrained; Termes de la Ley; Kitchen, fol. 145; Fitzh. N. B. fol. 67, 74.

A mortgage is a *dead-gage* or pledge; for, whatsoever profit it yields, it redeems not itself, unless the whole amount secured is paid at the appointed time. Cowel.

GAGER DEL LEY. Wager of law.

GAIN. Profits.

GAINAGE. Wainage, or the draught-oxen, horses, wain, plough, and furniture for carrying on the work of tillage. Also, the land tilled itself, or the profit arising from it. Old N. B. fol. 117.

Gainor. The sokeman that hath such land in occupation. Old N. B. fol. 12.

GALE. The payment of a rent or annuity. GABEL.

GALENES. In Old Scotch Law. A kind of compensation for slaughter. Bell, Dict.

GALLON. A liquid measure, containing two hundred and thirty-one cubic inches, or four quarts. The *imperial* gallon contains about 277 and the ale gallon 282 cubic inches.

GALLOWS. An erection on which to hang criminals condemned to death.

GAME. Birds and beasts of a wild nature, obtained by fowling and hunting. Bacon, Abr. See 11 Metc. 79.

GAME LAWS. Laws regulating the killing or taking of birds and beasts, as game.

A statute forbidding any one to kill, sell, or have in possession, woodcock, etc., between specified days, has been held not to apply to such birds lawfully taken in another state; 128 Mass. 410. Otherwise as to game unlawfully taken in another state; 35 Am. Rep. 390, note. See 19 Kans. 127; L. R. 2 C. P. Div. 553.

A statute which prohibits the having in possession of game birds after a certain time, though killed within the lawful time, is constitutional; 60 N. Y. 10; 95 U. S. 465; 7 Mo. App. 524.

The English game laws are founded on the idea of restricting the right of taking game to certain privileged classes, generally landholders. In 1831, the law was so modified as to enable any one to obtain a certificate or license to kill game, on payment of a fee. An account of the present game laws of England will be found in Appleton's New Am. Cyc. vol. viii., Eng. Cyc., Arts & Sc. Div. Under the stat. 39 & 40 Vict. c. 29, one having in his possession a plover killed abroad, was convicted; L. R. 2 C. P. Div. 553. The laws relating to game in the United States are generally, if not universally, framed with reference to protecting the animals from indiscriminate and unreasonable havoc, leaving all persons free to take game, under certain restrictions as to the season of the year and the means of capture. The details of these regulations must be sought in the statutes of the several states.

GAMING. A contract between two or more persons by which they agree to play by certain rules at cards, dice, or other contrivance, and that one shall be the loser and the other the winner.

When considered in itself, and without regard to the end proposed by the players, there is nothing in it contrary to natural equity, and the contract will be considered as a reciprocal gift, which the parties make of the thing played for, under certain conditions.

There are some games which depend altogether upon skill, others which depend upon chance, and others which are of a mixed nature. Billiards is an example of the first; lottery, of the second; and backgammon, of the last. See 8 Ired. 271. The decisions as to what constitutes gaming have not been altogether uniform; but under the statutes making it a penal offence, it may be defined as a staking on chance where chance is the controlling factor; that betting on a horse race is so, see 18 Me. 337; 23 Ill. 493; 8 Blackf. 332; 9 Ind. 35; 4 Mo. 536; 51 Ill. 473; *contra*, 23 Ark. 726; 31 Mo. 35; 8 Gratt. 592; that a billiard table is a gaming table; 28 How. Pr. 247; 39 Iowa, 42; *contra*, 15 Ind. 474; 34 Miss. 606. The following are additional examples of illegal gaming: cock fighting and betting thereon; 8 Metc. 232; 1 Hump. 486; see 11 Metc. 79; the game of "equality;" 1 Cra. C. C. 535; a "gift enterprise;" 5 Sneed, 507; 3 Heisk. 488; "keno;" 48 Ala. 122; 7 La. An. 651; "loto;" 1 Mo. 722; betting on "pool;" 39 Mo. 420; a ten-pin alley; 29 Ala. 32; see 32 N. J. L. 158; throwing dice or playing any game of hazard, to determine who shall pay for liquor or other article bought; 14 Gray, 26; *id.* 390; one who keeps tables on which "poker" is played, but is not directly interested in the game, is not guilty of gaming under the Virginia code; 32 Gratt. 884; merely betting at "faro" is not carrying on the game; 53 Cal. 246; the law against any game cannot be evaded by changing the name of the game; 17 Tex. 191; athletic contests, when not conducted brutally, even when played for a stake, have been held lawful; 2 Whar. Cr. L. § 1465 *et seq.* See WAGER.

In general, at common law, all games are lawful, unless some fraud has been practised or such games are contrary to public policy. Each of the parties to the contract must have a right to the money or thing played for. He must have given his full and free consent, and not have been entrapped by fraud. There must be equality in the play. The play must be conducted fairly. But, even when all these rules have been observed, the courts will not countenance gaming by giving too easy a remedy for the recovery of money won at play; Bacon, Abr.

But when fraud has been practised, as in all other cases, the contract is void; and in some cases, when the party has been guilty of cheating, by playing with false dice, cards, and the like, he may be indicted at common law, and fined and imprisoned according to the heinousness of the offence; 1 Russ. Cr. 406.

Statutes have been passed in perhaps all the states forbidding gaming for money at certain games, and prohibiting the recovery of money lost at such games. See Bacon, Abr.; Dane, Abr. Index; Pothier, Traité du Jeu; Merlin, Répert. mot *Jeu*; Barbeyrac, Traité du Jeu, tome 1, p. 104, note 4; 1 P. A. Browne, 171; 1 Ov. 360; 3 Pick. 446; 7 Cow. 496; 1 Bibb, 614; 1 Mo. 635; 1 Bail. 315; 6 Rand. 694; 2 Blackf. 251; 3 *id.* 294; 2 Bish. Cri. Law, § 507.

Statutes which forbid or regulate places of amusement that may be resorted to for the purpose of gaming or which forbid altogether the keeping of instruments made use of for unlawful games, are within the police power of the legislature, and therefore constitutional; Cooley, Const. Lim. 749. See 8 Gray, 488; 29 Me. 457; 38 N. H. 426.

GAMING CONTRACTS. See WAGER.

GAMING HOUSES. In Criminal Law. Houses kept for the purpose of permitting persons to gamble for money or other valuable thing. They are nuisances in the eyes of the law, being detrimental to the public, as they promote cheating and other corrupt practices; 1 Russ. Cr. 299; Rosc. Cr. Ev. 663; 3 Denio, 101.

In an indictment under a statute prohibiting gaming houses, the special facts making such a house a nuisance must be averred; Whar. Cr.

Law, § 1466; Whar. Cr. Pl. and Pr. §§ 154, 230; 5 Cranch, C. C. 378. The proprietor of a gaming establishment cannot take advantage of a statute enabling a person losing money at a game of chance to recover it back; 14 Bush. 538.

GANANCIAL. In Spanish Law. Property held in community.

The property of which it is formed belongs in common to the two consorts, and, on the dissolution of the marriage, is divisible between them in equal shares. It is confined to their future acquisitions *durante el matrimonio*, and the *frutos* or rents and profits of the other property. 1 Burge, Confl. Laws, 418, 419; Aso & M. Inst. b. 1, t. 7, c. 5, § 1.

GAOL. (This word, sometimes written *jail*, is said to be derived from the Spanish *jaula*, a cage (derived from *caula*), in French *gêole*, gaol. 1 M. & G. 222, note *a*.) A prison or building designated by law or used by the sheriff for the confinement or detention of those whose persons are judicially ordered to be kept in custody. See 6 Johns. 22; 14 Viner, Abr. 9; Bacon, Abr.; Dane, Abr. Index; 4 Comyns, Dig. 619.

GAOL-DELIVERY. In English Law. To insure the trial, within a certain time, of all prisoners, a patent, in the nature of a letter, is issued from the king to certain persons, appointing them his justices and authorizing them to deliver his gaols. 3 Bl. 60; 4 *id.* 269. See GENERAL GAOL DELIVERY; OYER AND TERMINER.

GAOL LIBERTIES, GAOL LIMITS. A space marked out by limits, which is considered as a part of the prison, and within which prisoners are allowed to go at large on giving security to return. Owing to the rigor of the law which allowed *capias*, or attachment of the person, as the first process against a debtor, statutes were from time to time passed enlarging the gaol liberties, in order to mitigate the hardships of imprisonment: thus, the whole city of Boston was held the "gaol liberties" of its county gaol. And so with a large part of New York city. Act of March 13, 1830, 3 N. Y. Rev. Stat. 1829, App. 116. The prisoner, while within the limits, is considered as within the walls of the prison; 6 Johns. 121.

GAOLER. The keeper of a gaol or prison; one who has the legal custody of the place where prisoners are kept.

It is his duty to keep the prisoners in safe custody, and for this purpose he may use all necessary force; 1 Hale, Pl. Cr. 601. But any oppression of a prisoner, under a pretended necessity, will be punished; for the prisoner, whether he be a debtor or a criminal, is entitled to the protection of the laws from oppression.

GARAUNTOR. A warrantor or vouchee, who is obliged by his warranty (*garauntie*) to warrant (*garaunter*) the title of the warrantee (*garaunte*), that is, to defend him in his seisin, and if he do not defend, and the tenant be ousted, to give him land of equal value. Britton, c. 75.

GARBALLO DECIMÆ (L. Lat.; from *garba*, a sheaf). **In Scotch Law.** Tithes of corn: such as wheat, barley, oats, pease, etc. Also called parsonage tithes (*decimæ rectoriæ*). Erskine, Inst. b. 11, tit. 10, § 13.

GARDEN. A piece of ground appropriated to raising plants and flowers.

A garden is a parcel of a house, and passes with it; 2 Co. 32; Plowd. 171; Co. Litt. 5 *b*, 56 *a*, *b*; Wood's Landl. and Tenn. 309 n. 1 and 4. But see F. Moore, 24; Bacon, Abr. *Grants*, I.

GARNISH. In English Law. Money paid by a prisoner to his fellow-prisoners on his entrance into prison.

To warn. To garnish the heir is to warn the heir. Obsolete.

GARNISHEE. In Practice. A person who has money or property in his possession belonging to a defendant, which money or property has been attached in his hands, with notice to him of such attachment; he is so called because he has had warning or notice of the attachment.

From the time of the notice of the attachment, the garnishee is bound to keep the money or property in his hands, to answer the plaintiff's claim, until the attachment is dissolved or he is otherwise discharged. See Sergeant, Att. 88–110; Drake, Att.; Comyns, Dig. *Attachment*, E.

There are garnishees also in the action of detinue. They are persons against whom process is awarded, at the prayer of the defendant, to warn them to come in and interplead wtih the plaintiff; Brooke, Abr. *Detinue*.

GARNISHMENT. A warning to any one for his appearance, in a cause in which he is not a party, for the information of the court and explaining a cause; Cowel; but now generally used of the process of attaching money or goods due a defendant, in the hands of a third party. The person in whose hands such effects are attached is the *garnishee*, because he is *garnished*, or warned, not to deliver them to the defendant, but to answer the plaintiff's suit. The use of the form "garnishee" as a verb is a prevalent corruption in this country.

For example, in the practice of Pennsylvania, when an attachment issues against a debtor, in order to secure to the plaintiff a claim due by a third person to such debtor, notice is given to such third person, which notice is a garnishment, and he is called the garnishee

In detinue, the defendant cannot have a *sci. fa.* to garnish a third person unless he confess the possession of the chattel or thing demanded; Brooke, Abr. *Garnishment*, 1, 5. And when the garnishee comes in, he cannot vary or depart from the allegation of the defendant in his prayer of garnishment. The plaintiff does not declare *de novo* against the

garnishee; but the garnishee, if he appears in due time, may have oyer of the original declaration to which he pleads. See Brooke, Abr. *Garnishee and Garnishment*, pl. 8; Drake, Attachment; ATTACHMENT.

GARNISTURA. In Old English Law. Garniture; whatever is necessary for the fortification of a city or camp, or for the ornament of a thing. 8 Rymer, 328; Du Cange; Cowel; Blount.

GARSUMME. In Old English Law. An amerciament or fine. Cowel. See GRESSUME; GROSSOME; GERSUMA.

GATE (Sax. *geat*), at the end of names of places, signifies way or path. Cunningham, Law Dict.

In the words *beast-gate* and *cattle-gate*, it means a right of pasture: these rights are local to Suffolk and Yorkshire respectively; they are considered as corporeal hereditaments, for which ejectment will lie; 2 Stra. 1084; 1 Term, 137; and are entirely distinct from right of common. The right is sometimes connected with the duty of repairing the *gates* of the pasture: and perhaps the name comes from this.

GAUGER. An officer appointed to examine all tuns, pipes, hogsheads, barrels, and tierces of wine, oil, and other liquids, and to give them a mark of allowance, as containing lawful measure.

GAVEL. In Old English Law. Tribute; toll; custom; yearly revenue, of which there were formely various kinds. Jacob, Law Dict.; Taylor, Hist. Gavelkind, 26, 102. See GABEL.

GAVELET. An obsolete writ, a kind of *cessairt*, *q. v.*, used in Kent; Cowel.

GAVELGELD (Sax. *gavel*, rent, *geld*, payment). That which yields annual profit or toll. The tribute or toll itself. 3 Mon. Angl. 155; Cowel; Du Cange, *Gavelgida*.

GAVELHERTE. A customary service of ploughing. Du Cange.

GAVELKIND. The tenure by which almost all lands in England were held prior to the Conquest, and which is still preserved in Kent.

All the sons of a tenant of gavelkind lands take equally, or their heirs male and female by representation. The wife of such tenant is dowable of one-half the lands. The husband of such tenant has curtesy, whether issue be born or not, but only of one-half while without issue. Such lands do not escheat, except for treason or want of heirs. The heir of such lands may sell at fifteen years old, but must himself give livery. The rule as to division among brothers in default of sons is the same as among the sons.

Coke derives *gavelkind* from "gave all kinde;" for this custom gave to all the sons alike; 1 Co. Litt. 140 *a*; Lambard, from *gavel*, rent,—that is, land of the kind that pays rent or customary husbandry work, in distinction from lands held by knight service. Perambulations of Kent, 1656, p. 585. See Encyc. Brit.; Blount; 1 Bla. Com. 74; 2 *id.* 84; 4 *id.* 408.

GAVELMAN. A tenant who is liable to tribute. Somner, Gavelkind, p. 33; Blount. Gavelingmen were tenants who paid a reserved rent, besides customary service. Cowel.

GAVELMED. A customary service of mowing meadow-land or cutting grass (*consuetudo falcandi*). Somner, Gavelkind, App.; Blount.

GAVELWERK (called also *Gavelweek*). A customary service, either *manuopera*, by the person of the tenant, or *carropera*, by his carts or carriages. Phillips, Purveyance; Blount; Somner, Gavelkind, 24; Du Cange.

GAZETTE. The official publication of the British government, also called the *London Gazette*. It is evidence of acts of state, and of everything done by the queen in her political capacity. Orders of adjudication in bankruptcy are required to be published therein, and a copy of the *Gazette* containing such publication is conclusive evidence of the fact, and of the date thereof. Moz. & W.

GEBOCIAN (from Sax. *boc*). To convey *boc land*,—the grantor being said to *gebocian* the grantee of the land; 1 Reeve, Hist. Eng. Law, 10. But the better opinion would seem to be that *boc land* was not transferable except by descent. See Du Cange, *Liber*.

GELD (from Sax. *gildan;* Law Lat. *geldum*). A payment; tax, tribute. Laws of Hen. I. c. 2; Charta Edredi Regis apud Ingulfum, c. 81; Mon. Ang. t. 1, pp. 52, 211, 379; t. 2, pp. 161–163; Du Cange; Blount. The compensation for a crime.

We find geld added to the word denoting the offence, or the thing injured or destroyed, and the compound taking the meaning of compensation for that offence or the value of that thing. Capitulare 3, anno 813, cc. 23, 25; Carl. Magn. So, *wergeld*, the compensation for killing a man, or his value; *orfgeld*, the value of cattle; *angeld*, the value of a single thing; *octogeld*, the value eight times over, etc. Du Cange, *Geldum*.

GEMOT (*gemote*, or *mote;* Sax., from *gemettand*, to meet or assemble; L. Lat. *gemotum*). An assembly; a mote or moot, meeting, or public assembly.

There were various kinds: as, the *witenagemot*, or meeting of the wise men; the *folcgemot*, or general assembly of the people; the *shire-gemot*, or county court; the *burggemot*, or borough court; the *hundred-gemot*, or hundred court; the *hali-gemot*, or court-baron; the *halmote*, a convention of citizens in their public hall; the *holy-mote*, or holy court; the *sweingemote*, or forest court; the *wardmote*, or ward court; Cunningham, Law Dict. And see the several titles.

GENEALOGY. The summary history or table of a family, showing how the persons there named are connected together.

It is founded on the idea of a lineage or family. Persons descended from the common father constitute a family. Under the idea of degrees is

noted the nearness or remoteness of relationship in which one person stands with respect to another. A series of several persons, descended from a common progenitor, is called a *line*. Children stand to each other in the relation either of full blood or half-blood, according as they are descended from the same parents or have only one parent in common. For illustrating descent and relationship, genealogical tables are constructed, the order of which depends on the end in view. In tables the object of which is to show all the individuals embraced in a family, it is usual to begin with the oldest progenitor, and to put all the persons of the male or female sex in descending, and then in collateral, lines. Other tables exhibit the ancestors of a particular person in ascending lines both on the father's and the mother's side. In this way four, eight, sixteen, thirty-two, etc. ancestors are exhibited, doubling at every degree. Some tables are constructed in the form of a tree, after the model of canonical law (*arbor consanguinitatis*), in which the progenitor is placed beneath, as if for the root or stem.

GENER (Lat.). A son-in-law.

GENERAL AGENT. See AGENT.

GENERAL ASSEMBLY. A name given in some of the states to the senate and house of representatives, which compose the legislative body.

GENERAL AVERAGE. See AVERAGE; 2 Am. Dec. 207.

GENERAL CREDIT. The character of a witness as one generally worthy of credit. There is a distinction between this and particular credit, which may be affected by proof of particular facts relating to the particular action; 5 Abb. Pr. N. S. 232.

GENERAL GAOL DELIVERY. In English Law. One of the four commissions issued to judges holding the assizes, which empowers them to try and deliverance make of every prisoner who shall be in the gaol when the judges arrive at the circuit town, whether an indictment has been preferred at any previous assize or not.

It was anciently the course to issue special writs of gaol delivery for each prisoner, which were called writs *de bono et malo;* but, these being found inconvenient and oppressive, a general commission for all the prisoners has long been established in their stead. 4 Steph. Com. 333, 334; 2 Hawk. Pl. Cr. 14, 28.

Under this authority the gaol must be cleared and delivered of all prisoners in it, whenever or before whomever indicated or for whatever crime. Such deliverance takes place when the person is either acquitted, convicted, or sentenced to punishment. Bracton, 110. See COURTS OF OYER AND TERMINER AND GENERAL GAOL DELIVERY; ASSIZE.

GENERAL IMPARLANCE. In Pleading. One granted upon a prayer in which the defendant reserves to himself no exceptions.

GENERAL ISSUE. In Pleading. A plea which denies or traverses at once the whole indictment or declaration, without offering any special matter to evade it.

It is called the general issue because, by importing an absolute and general denial of what is alleged in the indictment or declaration, it amounts at once to an issue. 2 Bla. Com. 305. In the early manner of pleading, the general issue was seldom used except where the party meant wholly to deny the charges alleged against him. When he intended to excuse or palliate the charge, a special plea was used to set forth the particular facts.

But now, since special pleading is generally abolished, the same result is secured by requiring the defendant to file notice of special matters of defence which he intends to set up on trial, or obliging him to use a form of answer adapted to the plaintiff's declaration, the method varying in different systems of pleading. Under the English Judicature Acts, the general issue is no longer admissible in ordinary civil actions, except where expressly sanctioned by statute.

In criminal cases the general issue is, not guilty. In civil cases the general issues are almost as various as the forms of action: in assumpsit, the general issue is *non assumpsit;* in debt, *nil debet;* in detinue, *non detinet;* in trespass, *non culpabilis* (not guilty); in replevin, *non cepit*, etc.

GENERAL LAND OFFICE. A bureau in the United States government which has the charge of matters relating to the public lands.

It was established by the act of April 25, 1812, 2 Story, Laws, 1238. Another act was passed March 24, 1824, 3 Story, 1938, which authorized the employment of additional officers. And it was reorganized by an act entitled "An act to reorganize the General Land Office," approved July 4, 1836. It was originally a bureau of the treasury department, but was transferred in 1859 to the department of the interior. See DEPARTMENT; U. S. Rev. Stat. LANDS; Zabriskie's Pub. Land Laws of U. S.

GENERAL LAWS. The later constitutions of many of the states place restrictions upon the legistature to pass special laws in certain cases. In some states there is a provision that general laws only may be passed, in cases where such can be made applicable. Under these provisions the legislature has discretion to determine the cases in which a special law may be passed; 1 Kan. 178; 47 Ind. 355; 62 Mo. 247. Provisions requiring all laws of a general nature to be uniform in their operation does not prohibit the passage of laws applicable to cities of a certain class having not less than a certain number of inhabitants, although there be but one city in the state of that class; 18 Ohio, N. S. 85; Cooley, Const. Lim. 156. The wisdom of these constitutional provisions has been the subject of grave doubt. See Cooley, Const. Lim. 156, n.

GENERAL OCCUPANT. The man who could first enter upon lands held *pur autre vie*, after the death of the tenant for life, living the *cestui que vie*. At common law he held the lands by right for the remainder of the term; but this is now altered by statute, in England, the term going to the executors if not devised; 29 Car. II. c. 3; 14 Geo. II. c. 20; 2 Bla. Com. 258. This

has been followed by some states; 1 Md. Code, 666, s. 220, art. 93; in some states the term goes to heirs, if undevised; Mass. Gen. Stat. c. 91, § 1.

GENERAL SHIP. One which is employed by the charterer or owner on a particular voyage, and is hired by a number of persons, unconnected with each other, to convey their respective goods to the place of destination. A ship advertised for general receipt of goods to be carried on a particular voyage. The advertisement should state the name of the ship and master, the general character of the ship, the time of sailing, and the proposed voyages. See 1 Parsons, Mar. Law, 130; Abbott, Shipp. 123.

The shippers in a general ship generally contract with the master; but in law the owners and the masters are separately bound to the performance of the contract, it being considered as made with the owners as well as with the master; Abbott, Shipp. 319.

GENERAL SPECIAL IMPARLANCE. In Pleading. One in which the defendant reserves to himself "all advantages and exceptions whatsoever." 2 Chitty, Pl. 408. See IMPARLANCE.

GENERAL TRAVERSE. See TRAVERSE.

GENERAL WARRANT. A process which used to issue from the state secretary's office, to take up (without naming any person in particular) the author, printer, and publisher of such obscene and seditious libels as were particularly specified in it. The practice of issuing such warrants was common in early English history, but it received its death blow from Lord Camden, in the time of Wilkes. The latter was arrested and his private papers taken possession of under such a warrant, on a charge of seditious libel in publishing No. 45 of the North Briton. He recovered heavy damages against Lord Halifax who issued the warrant. Pratt, C. J., declared the practice to be "totally subversive of the liberty of the subject," and with the unanimous concurrence of the other judges condemned this dangerous and unconstitutional practice. See May, Const. Hist. of England; 5 Co. 91; 2 Wils. 151, 275; 10 Johns. 263; 11 *id.* 500; Cooley, Const. Lim. 369. Such warrants were declared illegal and void for uncertainty by a vote of the house of commons. Com. Jour. 22, April, 1766; Whart. Law Dict.

A writ of assistance.

The issuing of these was one of the causes of the American republic. They were a species of general warrant, being directed to "all and singular justices, sheriffs, constables and all other officers and subjects," empowering them to enter and search any house for uncustomed goods, and to command all to assist them. These writs were perpetual, there being no return to them. They were not executed, owing to the eloquent argument of Otis before the supreme court of Massachusetts against their legality. See Tudor, Life of Otis, 66.

The term occurs in modern law in a different sense. See 18 Ill. 67.

GENS (Lat.). **In Roman Law.** A union of families, who bore the same name, who were of an ingenuous birth, *ingenui*, none of whose ancestors had been a slave, and who had suffered no *capitis diminutio*.

Gentiles sunt, qui inter se eodem nomine sunt; qui ab ingenuis oriundi sunt; quorum majorum nemo servitutem servivit; qui capite non sunt deminuti. This definition is given by Cicero (Topic 6), after Scævola, the pontifex. But, notwithstanding this high authority, the question as to the organization of the *gens* is involved in great obscurity and doubt. The definition of Festus is still more vague and unsatisfactory. He says, "*Gentilis dicitur et ex eodem genere ortus, et is, qui simili nomine appellatur, ut ait Cincius: Gentiles mihi sunt, qui meo nomine appellantur.*" *Gens* and *genus* are convertible terms; and Cicero defines the latter word, "*Genus autem est quod sui similes communione quadam, specie autem differentes, duas aut plures complectitur partes.*" *De Oratore*, 1, 42. The *genus* is that which comprehends two or more particulars, similar to one another by having something in common, but differing in species. From this it may fairly be concluded that the *gens* or race comprises several families, always of ingenuous birth, resembling each other by their origin, general name,—*nomen*,—and common sacrifices or sacred rites,—*sacra gentilitia* (*sui similes communione quadam*),—but differing from each other by a *particular* name,—*cognomen* and *agnatio* (*specie autem differentes*). It would seem, however, from the litigation between the Claudii and Marcellii in relation to the inheritance of the son of a freedman, reported by Cicero, that the deceased, whose succession was in controversy, belonging to the gens Claudia, for the foundation of their claim was the gentile rights,—*gente*; and the Marcellii (plebeians belonging to the same gens) supported their pretensions on the ground that he was the son of their freedman. This fact has been thought by some writers to contradict that part of the definition of Scævola and Cicero where they say, *quorum majorum nemo servitutem servivit.* And Niebuhr, in a note to his history, concludes that the definition is erroneous: he says, "The claim of the patrician Claudii is at variance with the definition in the Topics, which excludes the posterity of freedmen from the character of gentiles: probably the decision was against the Claudii, and this might be the ground on which Cicero denied the title of gentiles to the descendants of freedmen. I conceive in so doing he must have been mistaken. We know from Cicero himself (*de Leg.* 11, 22) that no bodies or ashes were allowed to be placed in the common sepulchre unless they belonged to such as shared in the *gens* and its sacred rites; and several freedmen have been admitted into the sepulchre of the Scipios." But in another place he says, "The division into houses was so essential to the patrician order that the appropriate ancient term to designate that order was a circumlocution,—the *patrician gentes*; but the instance just mentioned shows beyond the reach of a doubt that such a gens did not consist of patricians alone. The Claudian contained the Marcellii, who were plebeians, equal to the Appii in the splendor of the honors they attained to, and incomparably more useful to the commonwealth; such plebeian families must evidently have arisen from marriages of disparagement, contracted before there was any right of intermarriage between the orders. But the Claudian house had also a very large num-

ber of insignificant persons who bore its name,—such as the M. Claudius who disputed the freedom of Virginia; nay, according to an opinion of earlier times, as the very case in Cicero proves, it contained the freedmen and their descendants. Thus, among the Gaels, the clan of the Campbells was formed by the nobles and their vassals: if we apply the Roman phrase to them, the former *had* the clan, the latter only belonged to it." It is obvious that, if what is said in the concluding part of the passage last quoted be correct, the definition of Scævola and Cicero is perfectly consistent with the theory of Niebuhr himself; for the definition, of course, refers to the original stock of the gens, and not to such as might be attached to it or stand in a certain legal relation towards it. In Smith's Dictionary of Greek and Roman Antiquities, edited by that accomplished classical scholar, Professor Anthon, the same distinction is intimated, though not fully developed, as follows:—"But it must be observed, though the descendants of freedmen might have no claim as gentiles, the members of the gens might, as such, have claims against them; and in this sense the descendants of freedmen might be gentiles." Hugo, in his history of the Roman Law, vol. 1, p. 83 *et seq.*, says, "Those who bore the same name belonged all to the same *gens:* they were gentiles with regard to each other. Consequently, as the freedmen took the name of their former master, they adhered to his *gens*, or, in other words, stood in the relation of *gentiles* to him and his male descendants. Livy refers in express terms to the *gens* of an enfranchised slave (b. 39, 19), '*Tecenicæ Hispalæ . . . gentis enupsio;*' and the right of inheritance of the son of a freedman was conferred on the ground of civil relationship,—*gente*. But there must necessarily have been a great difference between those who were born in the *gens* and those who had only entered it by adoption, and their descendants; that is to say, between those who formed the original stock of the *gens*, who were all of patrician origin, and those who had entered the family by their own enfranchisement or that of their ancestors. The former alone were entitled to the rights of the *gentiles;* and perhaps the appellation itself was confined to them, while the latter were called *gentilitii*, to designate those against whom the *gentiles* had certain rights to exercise." In a lecture of Niebuhr on the Roman Gentes, vol. 1, p. 70, he says, "Such an association, consisting of a number of families, from which a person may withdraw, but into which he cannot be admitted at all, or only by being adopted by the whole association, is a *gens*. It must not be confounded with the *family*, the members of which are descended from a common ancestor; for the patronymic names of the *gentes* are nothing but symbols, and are derived from heroes." Arnold gives the following exposition of the subject:—"The people of Rome were divided into the three tribes of the Ramnenses, Titienses, and Luceres, and each of these tribes was divided into ten curiæ: it would be more correct to say that the union of ten curiæ formed the tribe. For the state grew out of the junction of certain original elements; and these were neither the tribes, nor even the curiæ, but the gentes or houses which made up the curiæ. The first element of the whole system was the *gens*, or house, a union of several families who were bound together by the joint performance of certain religious rites. Actually, where a system of houses has existed within historical memory, the several families who composed a house were not necessarily related to one another; they were not really cousins more or less distant, all descended from a common ancestor. But there is no reason to doubt that in the original idea of a house the bond of union between its several families was truly sameness of blood; such was likely to be the earliest acknowledged tie, although afterwards, as names are apt to outlive their meaning, an artificial bond may have succeeded to the natural one, and a house, instead of consisting of families of real relations, was made up sometimes of families of strangers, whom it was proposed to bind together by a fictitious tie, in the hope that law and custom and religion might together rival the force of nature." 1 Arnold, Hist. 31. The gentiles inherited from each other in the absence of agnates: the rule of the Twelve Tables is, "*Si adenatos nec escit, gentilis familiam nancitor,*" which has been paraphrased, "*Si agnatus non erit, tum gentilis hæres esto.*"

GENTLEMAN. In English Law. A person of superior birth.

According to Coke, he is one who bears coat-armor, the grant of which adds gentility to a man's family. The eldest son had no exclusive claim to the degree; for, according to Littleton, "every son is as great a gentleman as the eldest." Co. 2d Inst. 667. Sir Thomas Smith, quoted by Blackstone, 1 Com. 406, says, "As for gentlemen, they are made good cheap in this kingdom; for whosoever studies the laws of the realm, who studies in the universities, who professeth liberal sciences, and (to be short) who can live idly and without manual labor, and will bear the port, charge, and countenance of a gentleman, shall be called master, and be taken for a gentleman." In the United States, this word is unknown to the law; but in many places it is applied by courtesy to all men. See Pothier, Proc. Crim. sec. 1, App. § 3.

GENTLEWOMAN. An addition formerly appropriate in England to the state or degree of a woman. Co. 2d Inst. 667.

GENTOO LAW. See HINDU LAW.

GEORGIA. The name of one of the original thirteen states of the United States of America.

It was called after George II., king of Great Britain, under whose reign it was colonized.

In 1732, George II. granted a charter to a company consisting of General James Oglethorpe, Lord Percival, and nineteen others, who planted a colony, in 1733, on the bank of the Savannah river, a short distance from its mouth.

The corporation thus created was authorized, for twenty-one years, to erect courts of judicature for all civil and criminal causes, and to appoint a governor, judges, and other magistrates. The territory was to be held, as of the manor of Hampton Court in Middlesex, in free and common socage, and not *in capite*.

This charter was to expire by its own limitation in 1773; and in 1771 the trustees surrendered it up to the crown, and the colony became a royal province.

A registration of conveyances was provided for in 1755, and the rights of personal liberty, private property, and of public justice were protected by ample colonial regulations. The constitution of the United States was unanimously adopted by Georgia.

The present constitution, as revised, compiled, and amended, was adopted by a convention at Atlanta and ratified by a vote of the people on 5th December, 1877. Among other things, it provides that no law or ordinance shall be passed containing any matter different from what is ex-

pressed in the title thereof; that there shall be no imprisonment for debt; that there shall be within the state of Georgia neither slavery nor involuntary servitude, save as a punishment for crime after legal conviction thereof; that the social status of the citizen shall never be the subject of legislation.

THE LEGISLATIVE POWER.—This is vested in a senate and house of representatives, which are separate and distinct branches, and which together constitute the general assembly.

The senate is composed of forty-four members, elected one from each senatorial district. A senator must be at least twenty-five years old, a citizen of the United States and an inhabitant of the state for four years, and have actually resided one year next before his election within the district for which he is chosen.

The house of representatives is composed of one hundred and seventy-five members, elected three from each of the six largest counties, two from the twenty-six counties having the next largest population, and one from each of the remaining one hundred and five counties. A representative must be at least twenty-one years old, a citizen of the United States, and an inhabitant of the state two years, and have resided in the county for which he is chosen one year immediately preceding the election.

The members of both branches are elected biennially, on the first Wednesday in October. The sessions are held biennially, commencing on the first Wednesday in November, and are limited to forty days, unless continued longer by a two-thirds vote in both houses.

THE EXECUTIVE POWER. *The Governor* is elected biennially by the qualified electors, or, in case no one has a majority, is selected by the general assembly from the two receiving the largest number of votes. He must be thirty years old, have been a citizen of the United States fifteen years, and a citizen of the state six years. He may grant reprieves for all offences against the state, except in cases of impeachment, and may grant pardons or remit any part of a sentence after conviction, except for treason, in which he may respite the execution and make report thereof to the next general assembly, by whom a pardon may be granted. He has the revision of all bills passed by both houses, before the same can become laws; but two-thirds of both houses may pass a law notwithstanding his dissent. The same qualified veto applies to every "vote, resolution, or order" to which the concurrence of both houses may be necessary, except in a question of adjournment or election.

THE JUDICIAL POWER. *The supreme court for the correction of errors* was organized in 1845. It consists of a chief justice and two associate justices elected by the legislature for six years. This court sits only for trial and correction of errors in law and equity in cases brought from the superior and city courts. It holds two sessions during the year at Atlanta. The court is required finally to determine each and every case on the docket at the first or second term after the writ of error is brought.

The superior court consists of sixteen judges, elected for their respective circuits, one for each, by the general assembly, for the term of four years. This court has exclusive jurisdiction in all felonies. They have exclusive jurisdiction, likewise, in all cases respecting the titles to land, and in cases of divorce. In all other civil cases, it has concurrent jurisdiction with the inferior courts. All the powers of a court of equity are vested exclusively in the superior courts, and the judges of the superior courts have power, by writs of *mandamus, prohibition, scire facias, certiorari*, and all other necessary writs, not only to carry their own powers fully into effect, but to correct the errors of all inferior judicatories.

The power to establish county courts and city courts is conferred on the general assembly, and such courts, with limited jurisdiction, have been established in some of the counties and cities of the state.

An ordinary is elected in each county, by the people, every four years, in whom is vested original jurisdiction over all testates' and intestates' estates. The ordinaries are paid by fees incident to the office. An appeal lies from this court to the superior court. It has no jury.

Justices of the peace are elected by the people, one for every militia district in the state: they hold their office for four years. An appeal lies from the magistrates to the jury of the district, composed of five men. Their civil jurisdiction extends to all sums not exceeding one hundred dollars.

There shall be an attorney-general elected by the people, at the same time and for the same term, as the governor is elected. One solicitor-general for each circuit is elected by the general assembly for the term of four years, who prosecutes offences against the state.

Pleadings in this state are simplified to the last degree. All suits are brought by petition to the court. The petition must contain the plaintiff's charge, allegation, or demand, plainly, fully, and distinctly set forth, which must be signed by the plaintiff or his attorney, and to which the clerk annexes a process, requiring the defendant to appear at the term to which the same is returnable. A copy is served on the defendant by the sheriff. The defendant makes his answer in writing, in which he plainly, fully, and distinctly sets forth the cause of his defence. The case then goes to the jury, without any replication or further proceedings; and the penal code declares that every indictment or accusation of the grand jury shall be deemed sufficiently technical and correct which states the offence in the terms or language of the code, *or so plainly* that the nature of the offence charged may be easily understood by the jury.

In all civil cases, either party may be examined by commission or upon the stand at the instance of his adversary, both at law and in equity.

No appeal lies in the superior courts from one jury to another, either at law or in equity, but the general assembly may provide by law for an appeal from one jury to another. The jurors are made judges of the law, as well as of the facts, in criminal cases. Divorces are granted upon certain legal grounds, prescribed by statutes, upon the concurrent verdicts of two juries at different terms.

GEREFA. Reeve, which see.

GERMAN. Whole or entire, as respects genealogy or descent: thus, "brother-german" denotes one who is brother both by the father's and mother's side; "cousins-german," those in the first and nearest degree, *i.e.* children of brothers or sisters. Tech. Dict.; 4 M. & G. 56.

GERONTOCOMI. In Civil Law. Officers appointed to manage hospitals for poor old persons. Clef des Lois Rom. *Administrateurs.*

GERSUME (Sax.). **In Old English Law.** Expense; reward; compensation; wealth; especially, the consideration or fine of a contract: e.g. *et pro hâc concessione dedit nobis prædictus Jordanus* 100 *sol. sterling de gersume.* Old charter, cited Somner, Gavelkind, 177; Tabul. Reg. Ch. 377; 3 Mon. Ang. 920; 3 *id.* 126. It is also used for a fine or compensation for an offence. 2 Mon. Ang. 973.

GESTATION, UTERO-GESTATION. In Medical Jurisprudence. The time during which a female, who has conceived, carries the embryo or fœtus in her uterus.

This directly involves *the duration of pregnancy*, questions concerning which most frequently arise in cases of contested legitimacy. The descent of property and peerage may be made entirely dependent upon the settlement of this question.

That which is termed the *usual period* of pregnancy is ten lunar months, forty weeks, two hundred and eighty days, equal to about nine calendar months and one week. One question that has here been much discussed is whether the period of gestation has a fixed limit, or is capable of being contracted or protracted beyond the usual term. Many have mantained that the laws of nature on this subject are immutable, and that the fœtus, at a fixed period, has received all the nourishment of which it is susceptible from the mother, and becomes as it were a foreign body. Its expulsion is, therefore, a physical necessity. Others hold, and with stronger reasons, that as all the functions of the human body that have been carefully observed are variable, and sometimes within wide limits, and as many observations and experiments in reference to the cow and horse have established the fact that in the period of utero-gestation there is more variation with them than in the human species, there should remain no doubt that this period in the latter is always liable to variation.

There are some women to whom it is peculiar always to have the normal time of delivery anticipated by two or three weeks, so that they never go beyond the end of the thirty-seventh or thirty-eighth week, for several pregnancies in succession. Montgomery, Preg. 264. So, also, there are many cases establishing the fact that the usual period is sometimes exceeded by one, two, or more weeks, the limits of which it is difficult or impossible to determine. Coke seems inclined to adopt a peremptory rule that forty weeks is the longest time allowed by law for gestation. Co. Litt. 123 *b*.

But although the law of some countries prescribes the time from conception within which the child must be born to be legitimate, that of England and America fixes no precise limit, but admits the possibility of the birth's occurring previous or subsequent to the usual time. The following are cases in which this question will be found discussed: 3 Brown, Ch. 349; Gardner Peerage case, Le Marchant Report.; Cro. Jac. 686; 7 Hazard, Reg. of Penn. 363; 2 Wh. & Stillé, Med. Jur. § 4. See PREGNANCY.

GESTIO (Lat.). **In Civil Law.** The doing or management of a thing. *Negotiorum gestio*, the doing voluntarily without authority business of another. L. 20, C. *de neg. gest.* *Gestor negotiorum*, one who so interferes with business of another without authority. *Gestio pro hærede*, behavior as heir; such conduct on the part of the heir as indicates acceptance of the inheritance and makes him liable for ancestor's debts universally: *e.g.* an entry upon, or assinging, or letting any of the heritable property, releasing any of the debtors of the estate, or meddling with the title-deeds or heirship movables, etc. Erskine, Inst. 3. 8. 82 *et seq.*; Stair, Inst. 3. 6. 1.

GEWRITE. In Saxon Law. Deeds or charters; writings. 1 Reeve, Hist. Eng. Law, 10.

GIFT. A voluntary conveyance; that is, a conveyance not founded on the consideration of money or blood.

The word denotes rather the motive of the conveyance: so that a feoffment or grant may be called a gift when gratuitous. A gift is of the same nature as a settlement; neither denotes a form of assurance, but the nature of the transaction. Watk. Conv. 199. The operative words of this conveyance are *do*, or *dedi—I give*, or *I have given.* The maker of this instrument is called the donor, and he to whom it is made, the donee. 2 Bla. Com. 316; Littleton, 59; Shepp. Touchst. c. 11.

Gifts inter vivos are gifts made from one or more persons, without any prospect of immediate death, to one or more others. *Gifts causâ mortis* are gifts made in prospect of death. See DONATIO CAUSA MORTIS.

Gifts *inter vivos* have no reference to the future, and go into immediate and absolute effect. Delivery is essential. Without actual possession, the title does not pass. A mere intention or naked promise to give, without some act to pass the property, is not a gift. There exists repentance (the *locus pœnitentiæ*) so long as the gift is incomplete and left imperfect in the mode of making it; 7 Johns. 26.

The subject of the gift must be certain; and there must be the mutual consent and concurrent will of both parties. Delivery must be according to the nature of the thing. It will have to be an actual delivery, so far as the subject is capable of delivery. If the thing be not capable of actual delivery, there must be some act equivalent to it. The donor must part not only with the possession, but with the dominion. If the thing given be a *chose in action*, the law requires an assignment or some equivalent instrument, and the transfer must be executed; 1 Swanst. 436; 1 Dev. 309. The presumption of a resulting trust in favor of the donor arises where a conveyance has been made, without consideration, to one of an estate or other property which has been purchased with the money of another; but this presumption is rebutted where the pur-

chase may fairly be deemed to be made for another from motives of natural love and affection; 85 Penn. 84; 32 Md. 78. Knowledge by the donee that the gift has been made is not necessary; L. R. 2 Ch. Div. 104. The gift is complete when the legal title has actually vested in the donee; 108 E. C. L. R. 435; and in cases of gifts by husband to wife, or parent to child living at home, the necessity for an actual change of possession does not exist; 61 Penn. 52; 15 Am. L. Reg. N. S. 701 n.

When the gift is perfect it is then irrevocable, unless it is prejudicial to creditors or the donor was under a legal incapacity or was circumvented by fraud.

If a man, intending to give a jewel to another, say to him, *Here I give you my ring with the ruby in it*, etc., and with his own hand delivers it to the party, this will be a good gift notwithstanding the ring bear any other jewel, being delivered by the party himself to the person to whom given; Bacon, Max. 87.

Where a father bought a ticket in a lottery, which he declared he gave to his infant daughter E, and wrote her name upon it, and after the ticket had drawn a prize he declared that he had given the ticket to his child E, and that the prize money was hers, this was held sufficient for a jury to infer all the formality requisite to a valid gift, and that the title in the money was complete and vested in E. See 10 Johns. 293.

GIFTOMAN. In Swedish Law. He who has a right to dispose of a woman in marriage.

The right is vested in the father, if living; if dead, in the mother. They may nominate a person in their place; but for want of such nomination the brothers-german, and for want of them the consanguine brothers, and in default of the latter the uterine brothers, have the right; but they are bound to consult the paternal or maternal grandfather. Swed. Code, *Marriage*, c. 1.

GILDA MERCATORIA (L. Lat.). A mercantile meeting.

If the king once grants to a set of men to have *gildam mercatoriam*, mercantile meeting assembly, this is alone sufficient to incorporate and establish them forever. 1 Bla. Com. 473, 474. A company of merchants incorporated. Stat. Will. Reg. Scot. c. 35; Leg. Burgorum Scot. c. 99; Du Cange; Spelman, Gloss.; 8 Co. 125 *a*; 2 Ld. Raym. 1134.

GILDO. In Saxon Law. Members of a *gild* or decennary. Oftener spelled *congildo*. Du Cange; Spelman, Gloss. *Geldum*.

GILL. A measure of capacity, equal to one-fourth of a pint. See MEASURE.

GIRANTEM. An Italian word which signifies the drawer. It is derived from *girare*, to draw, in the same manner as the English verb to murder is transformed into *murdrare* in our old indictments. Hall, Mar. Loans, 183, n.

GIRTH. A girth, or yard, is a measure of length. The word is of Saxon origin, taken from the circumference of the human body. Girth is contracted from *girdeth*, and signifies as much as girdle. See ELL.

GIRTH AND SANCTUARY. In Scotch Law. A refuge or place of safety given to those who had slain a man in heat of passion (*chaude melle*) and unpremeditatedly. Abolished at the Reformation. 1 Hume, 235; 1 Ross, Lect. 331.

GIST (sometimes, also, spelled *git*).

In Pleading. The essential ground or object of the action in point of law, without which there would be no cause of action. Gould, Pl. c. 4, § 12; 19 Vt. 102. In stating the substance or gist of the action, every thing must be averred which is necessary to be proved at the trial. The moving cause of the plaintiff's bringing the action, and the matter for which he recovers the principal satisfaction, is frequently entirely collateral to the gist of the action. Thus, where a father sues the defendant for a trespass for the seduction of his daughter, the gist of the action is the trespass and the loss of his daughter's services; but the collateral cause is the injury done to his feelings, for which the principal damages are given. See 1 Viner, Abr. 598; 2 Phill. Ev. 1, n.; Bacon, Abr. *Pleas*, B.; Doctr. Plac. 85; DAMAGES.

GIVE. A term used in deeds of conveyance. At common law, it implied a covenant for quiet enjoyment; 2 Hill. R. P. 366. So in Kentucky; 1 Pirtle, Dig. 211. In Maryland and Alabama it is doubtful; 7 G. & J. 311; 5 Ala. N. S. 555. In Ohio, in conveyance of freehold, it implies warranty for the grantor's life; 2 Hill. R. P. 366. In Maine it implies a covenant; 6 Me. 227; 23 *id.* 219. In New York it does not, by statute; see 14 Wend. 38. It does not imply covenant in North Carolina; 1 Murph. 343; nor in England, by statute 8 & 9 Vict. c. 106, § 4.

GIVER. He who makes a gift. By his gift, the giver always impliedly agrees with the donee that he will not revoke the gift.

GIVING IN PAYMENT. In Louisiana. A term which signifies that a debtor, instead of paying a debt he owes in money, satisfies his creditor by giving in payment a movable or immovable. See DATION EN PAIEMENT.

GIVING TIME. An agreement by which a creditor gives his debtor a delay or time in paying his debt beyond that contained in the original agreement. When other persons are responsible to him, either as drawer, indorser, or surety, if such time be given without the consent of the latter, it discharges them from responsibility to him; and the same effect follows if time is given to one of the joint makers of a note; 2 Daniel, Neg. Inst. 299. See SURETY; GUARANTY.

GLADIUS (Lat.). In old Latin authors, and in the Norman laws, this word was used to signify supreme jurisdiction: *jus gladii.*

GLEANING. The act of gathering such grain in a field where it grew, as may have been left by the reapers after the sheaves were gathered.

There is a custom in England, it is said, by which the poor are allowed to enter and glean upon another's land after harvest, without being guilty of a trespass; 3 Bla. Com. 212. But it has been decided that the community are not entitled to claim this privilege as a right; 1 H. Blackst. 51. In the United States, it is believed, no such right exists. It seems to have existed in some parts of France. Merlin, Rép. *Glanage.* As to whether gleaning would or would not amount to larceny, see Wood. Landl. & T. 242; 2 Russ. Cr. 99. The Jewish law may be found in the 19th chapter of Leviticus, verses 9 and 10. See Ruth ii. 2, 3; Isaiah xxii. 6.

GLEBE. In Ecclesiastical Law. The land which belongs to a church. It is the dowry of the church. *Gleba est terra qua consistit dos ecclesiæ.* 9 Cra. 329.

In Civil Law. The soil of an inheritance. There were serfs of the glebe, called *glebæ addicti.* Code 11. 47. 7, 21; Nov. 54, c. 1.

GLOSS (Lat. *glossa*). Interpretation; comment; explanation; remark intended to illustrate a subject,—especially the text of an author. See Webster, Dict.

In Civil Law. *Glossæ*, or *glossemata*, were words which needed explanation. Calvinus, Lex. The explanations of such words. Calvinus, Lex. Especially used of the short comments or explanations of the text of the Roman Law, made during the twelfth century by the teachers at the schools of Bologna, etc., who were hence called *glossators*, of which glosses Accursius made a compilation which possesses great authority, called *glossa ordinaria.* These glosses were at first written between the lines of the text (*glossæ interlineares*), afterwards, on the margin, close by and partly under the text (*glossæ marginales*). Cushing, Introd. to Rom. Law, 130–132.

GLOSSATOR. A commentator or annotator of the Roman law. One of the authors of the Gloss.

GLOUCESTER, STATUTE OF. An English statute, passed 6 Edw. I., A. D. 1278: so called because it was passed at Gloucester. There were other statutes made at Gloucester which do not bear this name. See stat. 2 Rich. II.

GO WITHOUT DAY. Words used to denote that a party is dismissed the court. He is said to go without day, because there is no day appointed for him to appear again.

GOAT, GOTE (Law Lat. *gota;* Germ. *gote*). A canal or sluice for the passage of water. Charter of Roger, Duke de Basingham, *anno* 1220, *in Tabularis S. Bertini;* Du Cange.

A ditch, sluice, or gutter. Cowel, *Gote;* stat. 23 Hen. VIII. c. 5. An engine for draining waters out of the land in the sea, erected and built with doors and percullesses of timber, stone, or brick,—invented first in Lower Germany. Callis, Sewers, 66.

GOD AND MY COUNTRY. When a prisoner is arraigned, he is asked, How will you be tried? he answers, *By God and my country.* This practice arose when the prisoner had the right to choose the mode of trial, namely, by ordeal or by jury, and then he elected by *God* or by *his country*, that is, by jury. It is probable that originally it was *By God* or *my country;* for the question asked supposes an option in the prisoner, and the answer is meant to assert his innocence by declining neither sort of trial. 1 Chitty, Cr. Law, 416; Barring. Stat. 73, note.

GOD BOTE. In Ecclesiastical Law. An ecclesiastical or church fine imposed upon an offender for crimes and offences committed against God.

GOD'S PENNY. In Old English Law. Money given to bind a bargain; earnest-money. So called because such money was anciently given to God,—that is, to the church and the poor. See DENARIUS DEI.

GOING WITNESS. One who is going out of the jurisdiction of the court, although only into a state or country under the general sovereignty: as, for example, if he is going from one to another of the United States, or, in Great Britain, from England to Scotland. 2 Dick. Ch. 454. See DEPOSITION; WITNESS.

GOLDSMITH'S NOTES. In English Law. Banker's notes: so called because the trades of banker and goldsmith were originally joined. Chitty, Bills, 423.

GOOD AND VALID. Legally firm: *e. g.* a good title. Adequate; responsible: *e. g.* his security is good for the amount of the debt. Webst. A note satisfies a warranty of it as a "good" note if the makers are able to pay it, and liable do so on proper legal diligence being used against them. 26 Vt. 406.

GOOD BEHAVIOR. Conduct authorized by law. Surety of good behavior may be demanded from any person who is justly suspected, upon sufficient grounds, of intending to commit a crime or misdemeanor. Surety for good behavior is somewhat similar to surety of the peace, but the recognizance is more easily forfeited, and it ought to be demanded with greater caution; 1 Binn. 98, n.; 2 Yeates, 437; 14 Viner, Abr. 21; Dane, Abr. Index. As to what is a breach of good behavior, see 2 Mart. La. N. S. 683; Hawk. Pl. Cr. b. I, c. 61, s. 6; 1 Chitty, Pr. 676. See SURETY OF THE PEACE.

GOOD CONSIDERATION. See CONSIDERATION.

GOOD AND LAWFUL MEN. Those qualified to serve on juries; that is, those of full age, citizens, not infamous or *non compos mentis;* and they must be resident in the county where the venue is laid. Bacon, Abr.

Juries (A); Cro. Eliz. 654; Co. 3d Inst. 30; 2 Rolle, 82; Cam. & N. 38.

GOOD WILL. The benefit which arises from the establishment of particular trades or occupations. The advantage or benefit which is acquired by an establishment, beyond the mere value of the capital, stocks, funds or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers, on account of its local position, or common celebrity, or reputation for skill or affluence or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities, or prejudices. Story, Partn. § 99. See 1 Hoffm. 68; 16 Am. Jur. 87; 22 Beav. 84; 60 Penn. 161; 5 Russ. 29. "The good will . . . is nothing more than the probability that the old customers will resort to the old place." *Per* Eldon, C., in 17 Ves. 335; but this is said to be too narrow a definition; *per* Wood, V. C., in Johns. Ch. (Eng.) 174, who there said that the term meant every advantage . . . that has been acquired by the old firm in carrying on its business, whether connected with the premises in which the business was previously carried on, or with the name of the late firm, or with any other matter carrying with it the benefit of the late business.

As between partners, it has been held that the good will of a partnership trade survives; 5 Ves. 539; but this appears to be doubtful; 15 Ves. 227; and a distinction in this respect has been suggested between commercial and professional partnerships; 3 Madd. 79; 2 De G. & J. 626; but see 14 Am. L. Reg. N. S. 10, where the distinction is said by Mr. Biddle to be untenable. It has been held that the firm name constitutes a part of the good will of a partnership; Johns. Ch. (Eng.) 174; 6 Hare, 325; *contra*, 19 How. Pr. 14. The vendor of a trade or business and of the good will thereof may, in the absence of express stipulation to the contrary, set up a similar, but not the identical business either in the same neighborhood or elsewhere, but he must not solicit the customers of the old business to cease dealing with the purchasers, or to give their custom to himself; 17 Ves. 335; Collyer, Partn. 174; where a partner sells out his share in a going concern, he is presumed to include the good will; Johns. Ch. (Eng.) 174. When a partnership is dissolved by death, bankruptcy, or otherwise, the good will is an asset of the firm, and should be sold and the proceeds distributed among the partners; 15 Ves. 218; 1 Pars. Eq. Cas. 270. On the death of a partner the good will does not go to the survivor, unless by express agreement; 22 Beav. 84; 26 L. J. N. S. 391. It may be bequeathed by will; 27 Beav. 446. The dissolution of the firm during the life time of all the partners gives each of them the right to use the firm name; 34 Beav. 566; *contra*, 4 Sandf. Ch. 379; see 19 Alb. L. J. 502; 13 Cent. L. J. 161. The good will of a trade or business may be sold like other personal property; see 3 Mer. 452; 1 J. & W. 589; 2 Swanst. 332; 1 V. & B. 505; 17 Ves. 346; 2 Madd. 220; 2 B. & Ad. 341; 4 *id.* 592, 596; 1 Rose, 123; 5 Russ. 29; 2 Watts, 111; 1 S. & S. 74; 62 Penn. 81. This title is fully treated in 14 Am. L. Reg. N. S.

GOODS. In Contracts. The term goods is not so wide as chattels, for it applies to inanimate objects, and does not include animals or chattels real, as a lease for years of house or land, which chattels does include; Co. Litt. 118; 1 Russ. 376.

Goods will not include fixtures; 2 Mass. 495; 4 J. B. Moore, 73. In a more limited sense, goods is used for articles of merchandise; 2 Bla. Com. 389. It has been held in Massachusetts that promissory notes were within the term goods in the Statute of Frauds; 3 Metc. Mass. 365; but see 24 N. H. 484; 4 Dudl. 28; so stock or shares of an incorporated company; 20 Pick. 9; 3 H. & J. 38; 15 Conn. 400; so, in some cases, bank notes and coin; 2 Stor. 52; 5 Mas. 537.

In Wills. In wills goods is *nomen generalissimum*, and, if there is nothing to limit it, will comprehend all the personal estate of the testator, as stocks, bonds, notes, money, plate, furniture, etc.; 1 Atk. 180–182; 2 *id.* 62; 1 P. Wms. 267; 1 Brown, Ch. 128; 4 Russ. 370; Will. Ex. 1014; 1 Rop. Leg. 250; but in general it will be limited by the context of the will; see 2 Belt, Suppl. Ves. 287; 1 Chitty, Pr. 89, 90; 1 Ves. 63; 3 *id.* 212; Hamm. Parties, 182; 1 Yeates, 101; 2 Dall. 142; Ayliffe, Pand. 296; Weskett, Ins. 260; Sugd. Vend. 493, 497; see 1 Jarman, Wills, 751; and the articles BIENS, CHATTELS, FURNITURE.

GOODS AND CHATTELS. In Contracts. A term which includes not only personal property in possession, but choses in action and chattels real, as a lease for years of house or land, or emblements; 12 Co. 1: 1 Atk. 182; Co. Litt. 118; 1 Russ. 376.

In Criminal Law. Choses in action, as bank notes, mortgage deeds, and money, do not fall within the technical definition of "goods and chattels." And if described in an indictment as goods and chattels, these words may be rejected as surplusage; 4 Gray, 416; 3 Cox, Cr. Cas. 460; 1 Den. Cr. Cas. 450; 1 Dearsl. & B. 426; 2 Zabr. 207; 1 Leach, 241, 4th ed. 468. See 5 Mas. 537.

In Wills. If unrestrained, these words will pass all personal property; Will. Ex. 1014 *et seq.* Am. notes. See 1 Jarman, Wills, 751; Add. Contr. 31, 201, 912, 914.

GOODS SOLD AND DELIVERED. A phrase used to designate the action of assumpsit brought when the sale and delivery of goods furnish the cause.

A sale, delivery, and the value of the goods must be proved. See ASSUMPSIT.

GOODS, WARES, AND MERCHANDISE. A phrase used in the Statute of Frauds. Fixtures do not come within it; 1

Cr. M. & R. 275; 3 Tyrwh. 959; 1 Tyrwh. & G. 4. Growing crops of potatoes, corn, turnips, and other annual crops, are within it; 8 D. & R. 314; 10 B. & C. 446; 4 M. & W. 347; *contra*, 2 Taunt. 38. See Addison, Contr. 31, 32; 2 Dana, 206; 2 Rawle, 161; 5 B. & C. 829; 10 Ad. & E. 753. As to when growing crops are part of the realty and when personal property, see 1 Washb. R. P. 3. Promissory notes and shares in an incorporated company, and, in some cases, money and bank-notes, have been held within it; see 2 Parsons, Contr. 330–332; the term "merchandise" as used in the revised statutes of the United States includes goods, wares, and chattels of every description capable of being imported; R. S. § 2766; GOODS AND CHATTELS.

GOUT. In Medical Jurisprudence. An inflammation of the fibrous and ligamentous parts of the joints.

In case of insurance on lives, when there is warranty of health, it seems that a man subject to the gout is capable of being insured, if he has no sickness at the time to make it an unequal contract; 2 Park, Ins. 650.

GOVERNMENT (Lat. *gubernaculum*, a rudder. The Romans compared the state to a vessel, and applied the term *gubernator*, helmsman, to the leader or actual ruler of a state. From the Latin, this word has passed into most of the modern European languages). That institution or aggregate of institutions by which a state makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon the people forming a state.

We understand, in modern political science, by *state*, in its widest sense, an independent society, acknowledging no superior, and by the term *government*, that institution or aggregate of institutions by which that society makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon the people forming that society by those who possess the power or authority of prescribing them. Government is the aggregate of authorities which rule a society. By *administration*, again, we understand in modern times, and especially in more or less free countries, the aggregate of those persons in whose hands the reins of government are for the time-being (the chief ministers or heads of departments). But the terms state, government, and administration are not always used in their strictness. The government of a state being its most prominent feature, which is most readily preceived, government has frequently been used for state; and the publicists of the last century almost always used the term government, or form of government, when they discussed the different political societies or states. On the other hand, government is often used, to this day, for administration, in the sense in which it has been explained. We shall give in this article a classification of all governments and political societies which have existed and exist to this day.

Governments, or the authorities of societies, are, like societies themselves, grown institutions. See INSTITUTION.

They are never actually created by agreement or compact. Even where portions of government are formed by agreement, as, for instance, when a certain family is called to rule over a country, the contracting parties must previously be conscious of having authority to do so. As society originates with the family, so does authority or government. Nowhere do men exist without authority among them, even though it were but in its mere incipiency. Men are forced into this state of things by the fundamental law that with them, and with them alone of all mammals, the period of dependence of the young upon its parents outlasts by many years the period of lactation; so that, during this period of post-lactational dependence, time and opportunity are given for the development of affection and the habit of obedience on the one hand, and of affection and authority on the other, as well as of mutual dependence. The family is a society, and expands into clusters of families, into tribes and larger societies, collecting into communities, always carrying the habit and necessity of authority and mutual support along with them. As men advance, the great and pervading law of mutual dependence shows itself more and more clearly, and acts more and more intensely. Man is eminently a social being, not only as to an instinctive love of aggregation, not only as to material necessity and security, but also as to mental and affectional development, and not only as to a given number of existing beings, or what we will call as to *extent*, but also as to *descent* of generation after generation, or, as we may call it, transmission. Society, and its government along with it, are continuous. Government exists and continues among men, and laws have authority for generations which neither made them nor had any direct representation in making them, because the necessity of government—necessary according to the nature of social man and to his wants—is a continuous necessity. But the family is not only the institution from which once, at a distant period, society, authority, government arose. The family increases in importance, distinctness, and intensity of action as man advances, and continues to develop authority, obedience, affection, and social adhesiveness, and thus acts with reference to the state as the feeder acts with reference to the canal; the state originates daily anew in the family.

Although man is an eminently social being, he is also individual, morally, intellectually, and physically; and, while his individuality will endure even beyond this life, he is compelled, by his physical condition, to appropriate and to produce, and thus to imprint his individuality upon the material world around, to create property. But man is not only an appropriating and producing, he is also an exchanging being. He always exchanges and always intercommunicates. This constant intertwining of man's individualism and socialism creates mutual claims of protection, rights, the necessity of rules, of laws: in one word, as individuals and as natural members of society, men produce and require government. No society, no cluster of men, no individuals banded together even for a temporary purpose, can exist without some sort of government instantly springing up. Government is natural to men and characteristic. No animals have a government; no authority exists among them; instinct and physical submission alone exist among them. Man alone has laws which ought to be obeyed but may be disobeyed. Expansion, accumulation, development, progress, relapses, disintegration, violence, error, superstition, the necessity of intercommunication, wealth and poverty, peculiar disposition, temperament, configuration of the country, tra-

ditional types, pride and avarice, knowledge and ignorance, sagacity of individuals, taste, activity and sluggishness, noble or criminal bias, position, both geographical and chronological,—all that affects numbers of men affects their governments, and an endless variety of governments and political societies has been the consequence; but, whatever form of government may present itself to us, the fundamental idea, however rudely conceived, is always the protection of society and its members, security of property and person, the administration of justice therefor, and the united efforts of society to furnish the means to authority to carry out its objects,—contribution, which, viewed as imposed by authority, is taxation. Those bands of robbers which occasionally have risen in disintegrating societies, as in India, and who merely robbed and devastated, avowing that they did not mean to administer justice or protect the people, form no exception, although the extent of their soldiery and the periodicity of their raids caused them to be called governments. What little of government continued to exist was still the remnant of the communal government of the oppressed hamlets; while the robbers themselves could not exist without a government among themselves.

Aristotle classified governments according to the seat of supreme power, and he has been generally followed down to very recent times. Accordingly, we had Monarchy, that government in which the supreme power is vested in one man, to which was added, at a later period, the idea of hereditariness. Aristocracy, the government in which the supreme power is vested in the *aristoi*, which does not mean, in this case, the *best*, but the excelling ones, the prominent, *i. e.* by property and influence. Privilege is its characteristic. Its corresponding degenerate government is the Oligarchy (from *oligos*, little, few), that government in which supreme power is exercised by a few privileged ones, who generally have arrogated the power. Democracy, that government in which supreme power is vested in the people at large. Equality is one of its characteristics. Its degenerate correspondent is the ochlocracy (from *ochlos*, the rabble), for which at present the barbarous term mobocracy is frequently used.

But this classification was insufficient even at the time of Aristotle, when, for instance, theocracies existed; nor is the seat of supreme power the only characteristic, nor, in all respects, by any means the chief characteristic. A royal government, for instance, may be less absolute than a republican government. In order to group together the governments and political societies which have existed and are still existing, with philosophical discrimination, we must pay attention to the chief-power-holder (whether he be one or whether there are many), to the pervading spirit of the administration or wielding of the power, to the characteristics of the society or the influencing interests of the same, to the limitation or entirety of public power, to the peculiar relations of the citizen to the state. Indeed, every principle, relation, or condition characteristically influencing or shaping society or government in particular may furnish us with a proper division. We propose, then, the following

Grouping of Political Societies and Governments.

I. According to the supreme power-holder or the placing of supreme power, whether really or nominally so.

The power-holder may be one, a few, many, or all; and we have, accordingly:

A. *Principalities*, that is, states the rulers of which are set apart from the ruled, or inherently differ from the ruled, as in the case of the theocracy.

1. *Monarchy.*
   - *a.* Patriarchy.
   - *b.* Chieftain government (as our Indians).
   - *c.* Sacerdotal monarchy (as the States of the Church; former sovereign bishoprics).
   - *d.* Kingdom, or Principality proper.
   - *e.* Theocracy (Jehovah was the chief magistrate of the Israelitic state).
2. *Dyarchy.* It exists in Siam, and existed occasionally in the Roman empire; not in Sparta, because Sparta was a republic, although her two hereditary generals were called kings.

B. *Republic.*

1. Aristocracy.
   - *a.* Aristocracy proper.
     - *aa.* Aristocracies which are democracies within the body of aristocrats (as the former Polish government).
     - *bb.* Organic internal government (as Venice formerly).
   - *b.* Oligarchy.
   - *c.* Sacerdotal republic, or Hierarchy.
   - *d.* Plutocracy; if, indeed, we adopt this term from antiquity for a government in which it is the principle that the possessors of great wealth constitute the body of aristocrats.
2. Democracy.
   - *a.* Democracy proper.
   - *b.* Ochlocracy (Mob-rule), mob meaning unorganized multitude.

II. According to the unity of public power, or its division and limitation.

A. Unrestricted power, or absolutism.

1. According to the form of government.
   - *a.* Absolute monarchy, or despotism.
   - *b.* Absolute aristocracy (Venice); absolute sacerdotal aristocracy, etc. etc. etc.
   - *c.* Absolute democracy (the government of the Agora, or market democracy).
2. According to the organization of the administration.
   - *a.* Centralized absolutism. Centralism, called bureaucracy when carried on by writing: at least, bureaucracy has very rarely existed, if ever, without centralism.
   - *b.* Provincial (satraps, pashas, proconsuls).

B. According to divisions of public power.

1. Governments in which the three great functions of public power are separate, viz., the legislative, executive, judiciary. If a distinct term contradistinguished to centralism be wanted, we might call these co-operative governments.
2. Governments in which these branches are not strictly separate, as, for instance, in our government, but which are nevertheless not centralized governments; as Republican Rome, Athens, and several modern kingdoms.

C. Institutional government.

1. Institutional government comprehending the whole, or constitutional government.

a. Deputative government.
b. Representative government.
aa. Bicameral.
bb. Unicameral.

2. Local self-government. See V. We do not believe that any substantial self-government can exist without an institutional character and subordinate self-governments. It can exist only under an institutional government (see Lieber's Civil Liberty and Self-Government, under "Institution").

D. Whether the state is the substantive or the means, or whether the principle of socialism or individualism preponderates.

1. Socialism, that state of society in which the socialist principle prevails, or in which government considers itself the substantive; the ancient states absorbing the individual or making citizenship the highest phase of humanity; absolutism of Louis XIV. Indeed, all modern absolutism is socialistic.
2. Individualism, that system in which the state remains acknowledged a means, and the individual the substantive; where primary claims, that is, rights, are felt to exist, for the obtaining and protection of which the government is established,—the government, or even society, which must not attempt to absorb the individual. The individual is immortal, and will be of another world; the state is neither.

III. According to the descent or transfer of supreme power.

A. Hereditary governments.
Monarchies.
Aristocracies.
Hierarchies, etc.

B. Elective.
Monarchies.
Aristocracies.
Hierarchies.

C. Hereditary — elective — governments, the rulers of which are chosen from a certain family or tribe.

D. Governments in which the chief magistrate or monarch has the right to oppoint the successor; as occasionally the Roman emperors, the Chinese, the Russian, in theory, Bonaparte when consul for life.

IV. According to the origin of supreme power, real or theoretical.

A. According to the primordial character of power.

1. Based on *jus divinum*.
a. Monarchies.
b. Communism, which rests its claims on a *jus divinum* or extra-political claim of society.
c. Democracies, when proclaiming that the people, because the people, can do what they list, even against the law; as the Athenians once declared it, and Napoleon III. when he desired to be elected president a second time against the constitution.
2. Based on the sovereignty of the people.
a. Establishing an institutional government, as with us.
b. Establishing absolutism (the Bonaparte sovereignty).

B. Delegated power.

1. Chartered governments.
a. Chartered city governments.
b. Chartered companies, as the former great East India Company.
c. Proprietary governments.
2. Vice-Royalties; as Egypt, and, formerly, Algiers.
3. Colonial government with constitution and high amount of self-government, —a government of great importance in modern history.

V. Constitutions. (To avoid too many subdivisions, this subject has been treated here separately. See II.)

Constitutions, the fundamental laws on which governments rest, and which determine the relation in which the citizen stands to the government, as well as each portion of the government to the whole, and which therefore give feature to the political society, may be:

A. As to their origin.

1. Accumulative; as the constitutions of England or Republican Rome.
2. Enacted constitutions (generally, but not philosophically, called written constitutions).
a. Octroyed constitutions (as the French, by Louis XVIII.).
b. Enacted by the people, as our constitutions. ["We the people charter governments; formerly governments chartered the liberties of the people."]
3. Pacts between two parties, contracts, as Magna Charta, and most charters in the Middle Ages. The medieval rule was that as much freedom was enjoyed as it was possible to conquer,—*expugnare* in the true sense.

B. As to extent or uniformity.

1. Broadcast over the land. We may call them national constitutions, popular constitutions, constitutions for the whole state.
2. Special charters. Chartered, accumulated and varying franchises, medieval character.
(See article Constitution in the Encyclopædia Americana.)

VI. As to the extent and comprehension of the chief government.

A. Military governments.

1. Commercial government; one of the first in Asia, and that into which Asiatic society relapses, as the only remaining element, when barbarous conquerors destroy all bonds which can be torn by them.
2. Tribal government.
a. Stationary.
b. Nomadic. We mention the nomadic government under the tribal government, because no other government has been nomadic, except the patriarchal government, which indeed is the incipiency of the tribal government.
3. City government (that is, city-states; as all free states of antiquity, and as the Hanseatic governments in modern times).
4. Government of the Medieval Orders extending over portions of societies far apart; as the Templars, Teutonic Knights, Knights of St. John, Political societies without necessary territory, although they had always landed property.
5. National states; that is, populous political societies spreading over an extensive and cohesive territory beyond the limits of a city.

B. Confederacies.
1. As to admission of members, or extension.
a. Closed, as the Amphictyonic council, Germany.
b. Open, as ours.
2. As to the federal character, or the character of the members, as states.
a. Leagues.
aa. Tribal confederacies; frequently observed in Asia; generally of a loose character.
bb. City leagues; as the Hanseatic League, the Lombard League.
cc. Congress of deputies, voting by states and according to instruction; as the Netherlands republic and our Articles of Confederation, Germanic Confederation.
dd. Present "state system of Europe" (with constant congresses, if we may call this "system," a federative government in its incipiency).
b. Confederacies proper, with national congress.
aa. With *ecclesiæ* or democratic congress (Achæan League).
bb. With representative national congress, as ours.

C. Mere agglomerations of one ruler.
1. As the early Asiatic monarchies, or Turkey.
2. Several crowns in one head; as Austria, Sweden, Denmark.

VII. As to the construction of society, the title of property and allegiance.
A. As to the classes of society.
1. Castes, hereditarily dividing the whole population, according to occupations and privileges. India, ancient Egypt.
2. Special castes.
a. Government with privileged classes or caste; nobility
b. Government with degraded or oppressed caste; slavery.
c. Governments founded on equality of citizens (the uniform tendency of modern civilization).

B. As to property and production.
1. Communism.
2. Individualism.

C. As to allegiance.
1. Plain, direct; as in unitary governments.
2. Varied; as in national confederacies.
3. Graduated or *encapsulated;* as in the feudal system, or as in the case with the serf.

D. Governments are occasionally called according to the prevailing interest or classes; as
Military states; for instance, Prussia under Frederick II.
Maritime state.
Commercial.
Agricultural.
Manufacturing
Ecclesiastical, etc.

VIII. According to simplicity or complexity, as in all other spheres, we have—
A. Simple governments (formerly called *pure;* as pure democracy).
B. Complex governments, formerly called mixed. All organism is complex.

GRACE, DAYS OF. See DAYS OF GRACE.

GRADUS (Lat. a step). A measure of space. Vicat, Voc. Jur. A degree of relationship (*distantia cognatorum*). Heineccius, Elem. Jur. Civ. § 153; Bracton, fol. 134, 374; Fleta, lib. 6, c. 2, § 1, lib. 4, c. 17, § 4.

A step or degree generally: e. g. *gradus honorum*, degrees of honor. Vicat, Voc. Jur. A pulpit; a year; a generation. Du Cange.

A port; any place where a vessel can be brought to land. Du Cange.

GRAFFER (Fr. *greffier*, a clerk, or prothonotary). A notary or scrivener. See stat. 5 Hen. VIII. c. 1.

GRAFFIUM. A register; a leger-book or cartulary of deeds and evidences. 1 Annal. Eccles. Menevensio, apud Angl. Sacr. 653.

GRAFIO. A baron, inferior to a count. 1 Marten, Anecd. Collect. 13. A fiscal judge. An advocate. Gregor. Turon, l. 1, *de Mirac.* c. 33; Spelman, Gloss.; Cowel. For various derivations, see Du Cange.

GRAFT. In Equity. A term used to designate the right of a mortgagee in premises to which the mortgagor at the time of making the mortgage had an imperfect title, but who afterwards obtained a good title. In this case the new mortgage is considered a *graft* into the old stock, and as arising in consideration of the former title; 1 Ball & B. 40, 46, 57; 1 Pow. Mort. 190. See 9 Mass. 34. The same principle has obtained by legislative enactment in Louisiana. If a person contracting an obligation towards another, says the Civil Code, art. 3271, grants a mortgage on property of which he is not then the owner, this mortgage shall be valid if the debtor should ever require the ownership of the property, by whatever right.

GRAIN. The twenty-fourth part of a pennyweight.

For scientific purposes the grain only is used, and sets of weights are constructed in decimal progression, from ten thousand grains to one-hundredth of a grain.

Wheat, rye, barley, or Indian corn sown in the ground. It may include millet and oats; 34 Ga. 455; 29 N. J. L. 357. See AWAY-GOING CROP.

GRAINAGE. In English Law. The name of an ancient duty collected in London, consisting of one-twentieth part of the salt imported into that city.

GRAMME. The French unit of weight. The gramme is the weight of a cubic centimetre of distilled water at the temperature of 4° C. It is equal to 15.4341 grains troy, or 5.6481 drachms avoirdupois.

GRAND ASSIZE. An extraordinary trial by jury, instituted by Henry II., by way of alternative offered to the choice of the tenant or defendant in a writ of right, instead of the barbarous custom of trial by battel. For this purpose a writ *de magna assiza eliganda* was directed to the sheriff to return four knights, who were to choose twelve other

knights to be joined with themselves; and these sixteen formed the grand assize, or great jury, to try the right between the parties; 3 Bla. Com. 351. Abolished by 3 and 4 Wm. IV. c. 42.

GRAND BILL OF SALE. In English Law. The name of an instrument used for the transfer of a ship while she is at sea. See BILL OF SALE; 7 Mart. La. 318; 3 Kent, 133.

GRAND CAPE. In English Law. A writ judicial which lieth when a man has brought a *præcipe quod reddat*, of a thing that toucheth plea of lands, and the tenant makes default on the day given him in the writ original, then this writ shall go for the king, to take the land into the king's hands, and if he comes not at the day given him by the *grand cape*, he has lost his lands. Old N. B. fol. 161, 162; Regist. Judic. fol. 2 *b*; Bracton, lib. 5, tr. 3, cap. 1, nu. 4, 5, 6. So called because its Latin form began with the word *cape*, "take thou," and because it had more words than the *petit cape*, or because *petit cape* summons to answer for default only. *Petit cape* issues after appearance to the original writ, *grand cape* before. These writs have long been abolished.

GRAND COUTUMIER. Two collections of laws bore this title. One, also called the Coutumier of France, is a collection of the customs, usages, and forms of practice which had been used from time immemorial in France; the other, called the Coutumier de Normandie (which indeed, with some alterations, made a part of the former), was composed, about the fourteenth of Henry III., A. D. 1229, and is a collection of the Norman laws, not as they stood at the conquest of England by William the Conqueror, but some time afterwards, and contains many provisions probably borrowed from the old English or Saxon laws. Hale, Hist. Com. Law, c. 6. The work was reprinted in 1881 with notes by William L. De Gruchy. The Channel Islands are still for the most part governed by the ducal customs of Normandy; 1 Steph. Com. 100.

GRAND DAYS. In English Practice. Those days in the term which are solemnly kept in the inns of court and chancery, viz.: Candlemas-day in Hilary Term, Ascension-day in Easter Term, St. John the Baptist's day in Trinity Term, and All Saints' day in Michaelmas Term, which are *dies non-juridici*, or no days in court, and are set apart for festivity. Jacob, Law Dic.

All this is now altered; the grand days, which are different for each term of court, are those days in each term in which a more splendid dinner than ordinary is provided in the hall. Moz. & W.

An ancient kind of distress, more extensive than the writs of *grand* and *petit cape*, extending to all the goods and chattels of the party distrained within the country; T. L.; Cowel.

GRAND JURY. In Practice. A body of men, consisting of not less than twelve nor more than twenty-four, respectively returned by the sheriff of every county to every session of the peace, oyer and terminer, and general gaol delivery, to whom indictments are preferred. 4 Bla. Com. 302; 1 Chitty, Cr. Law, 310, 311; 1 Jur. Soc. Papers.

There is reason to believe that this institution existed among the Saxons. Crabb, Eng. Law, 35. By the constitution of Clarendon, enacted 10 Hen. II. (A.D. 1164), it is provided that "if such men were suspected whom none wished or dared to accuse, the sheriff, being thereto required by the bishop, should swear twelve men of the neighborhood, or village, to declare the truth" respecting such supposed crime, the jurors being summoned as witnesses or accusers rather than judges. It seems to be pretty certain that this statute either established grand juries, if this institution did not exist before, or reorganized them if they already existed. 1 Spence, Eq. Jur. 63.

Of the organization of the grand jury. The law requires that twenty-four citizens shall be summoned to attend on the grand jury; but in practice not more than twenty-three are sworn, because of the inconvenience which might arise of having twelve, who are sufficient to find a true bill, opposed to other twelve who might be against it; 2 Hale, Pl. Cr. 161; 6 Ad. & E. 236; 2 Caines, 98. The number of jurors is a matter of local regulations. In Massachusetts it is to be not less than thirteen nor more than twenty-three; 2 Cush. 149; in Mississippi and South Carolina, not less than twelve; 15 Miss. 58; 33 *id.* 356; 11 Rich. 581; in California, not less than seventeen; 6 Cal. 214; in Texas, not less than thirteen; 6 Tex. 99. An objection to the competency of a grand juror must be raised before the general issue; 30 Ohio St. 542; s. c. 27 Am. Rep. 478; Whart. Cr. Pl. § 350. It has been held that an objection comes too late after the jury has been impanelled and sworn; 9 Mass. 110; 3 Wend. 314; but on this point the authorities are conflicting; see *contra*, 12 R. I. § 492; s. c. 34 Am. Rep. 704, n.

Being called into the jury-box, they are usually permitted to select a foreman, whom the court appoints; but the court may exercise the right to nominate one for them. The foreman then takes the following oath or affirmation, namely: "You, A. B., as foreman of this inquest for the body of the ——, of ——, do swear (or affirm) that you will diligently inquire, and true presentment make, of all such articles, matters, and things as shall be given you in charge, or otherwise come to your knowledge, touching the present service; the commonwealth's counsel, your fellows', and your own, you shall keep secret; you shall present no one for envy, hatred, or malice; nor shall you leave any one unpresented for fear, favor, affection, hope of reward or gain, but shall present all things truly, as they come to your knowledge, according to the best of your understanding. So help you God." It will be preceived that

this oath contains the substance of the duties of the grand jury. The foreman having been sworn or affirmed, the other grand jurors are sworn or affirmed according to this formula:—"You and each of you do swear (or affirm) that the same oath (or affirmation) which your foreman has taken on his part, you and every one of you shall well and truly observe on your part." Being so sworn or affirmed, and having received the charge of the court, the grand jury are organized, and may proceed to the room provided for them, to transact the business which may be laid before them. 2 Burr. 1088; Bacon, Abr. *Juries*, A. See 12 Tex. 210. The grand jury constitute a regular body until discharged by the court, or by operation of law, as where they cannot continue, by virtue of an act of assembly, beyond a certain day. But although they have been formally discharged by the court, if they have not separated, they may be called back and fresh bills be submitted to them; 9 C. & P. 43.

The jurisdiction of the grand jury is coextensive with that of the court for which they inquire, both as to the offences triable there and the territory over which such court has jurisdiction.

The mode of doing business. The foreman acts as president, and the jury usually appoint one of their number to perform the duties of secretary. No records are to be kept of the acts of the grand jury, except for their own use, because their proceedings are to be secret. Bills of indictment against offenders are then supplied by the attorney-general, or other officer representing government. See 11 Ind. 473; Hempst. 176; 2 Blatchf. 435. On these bills are indorsed the names of the witnesses by whose testimony they are supported. The jury are also required to make true presentment of all such matters as have otherwise come to their knowledge. These presentments, which are technically so called, are, in practice, usually made at the close of the session of the grand jury, and include offences of which they have personal knowledge: they should name the authors of the offences, with a view to indictment. The witnesses in support of a bill are to be examined in all cases under oath, even when members of the jury itself testify,—as they may do.

Twelve at least must concur in order to the finding of a true bill, or the bill must be ignored; 6 Cal. 214. When a defendant is to be put upon trial, the foreman must write on the back of the indictment, "A true bill," sign his name as foreman, and date the time of finding. On the contrary, where there is not sufficient evidence to authorize the finding of the bill, the jury return that they are ignorant whether the person accused committed the offence charged in the bill, which is expressed by the foreman indorsing on the bill, "Ignoramus," "Not a true bill," or similar words, signing his name as before, and dating the indorsement.

A grand jury cannot indict without a previous prosecution before a magistrate; except in offences of public notoriety, such as are within their own knowledge, or are given them in charge by the court, or are sent to them by the prosecuting officer of the commonwealth; Whart. Cr. Pl. & Pr. § 338; 67 Penn. 30.

As to the witnesses, and the power of the jury over them. The jury are to examine all the witnesses in support of the bill, or enough of them to satisfy themselves of the propriety of putting the accused on trial, but none in favor of the accused. The jury are the sole judges of the credit and confidence to which a witness before them is entitled. It is decided that when a witness, duly summoned, appears before the grand jury, but refuses to be sworn, and behaves in a disrespectful manner towards the jury, they may lawfully require the officer in attendance upon them to take the witness before the court, in order to obtain its aid and direction in the matter; 8 Cush. 338; 14 Ala. N. S. 450. Such a refusal, it seems, is considered a contempt; 14 Ala. N. S. 450; but the governor of a state is exempt from the powers of *subpœna*, and this immunity extends to his official subordinates; 81 Penn. 433.

Of the secrecy to be observed. This extends to the vote given in any case, to the evidence delivered by witnesses, and to the communications of the jurors to each other: the disclosure of these facts, unless under the sanction of law, would render the imprudent juror who should make them public liable to punishment. Giving intelligence to a defendant that a bill has been found against him, to enable him to escape, is so obviously wrong that no one can for a moment doubt its being criminal. The grand juror who should be guilty of this offence might, upon conviction, be fined and imprisoned. The duration of the secrecy depends upon the particular circumstances of each case; 20 Mo. 326. In a case, for example, where a witness swears to a fact in open court, on the trial, directly in opposition to what he swore before the grand jury, there can be no doubt that the injunction of secrecy, as far as regards this evidence, would be at an end, and the grand jurors might be sworn to testify what this witness swore to in the grand jury's room, in order that the witness might be prosecuted for perjury; 2 Russ. Cr. 616; 4 Me. 439: but see *contra*, 2 Halst. 347; 1 C. & K. 519. See INDICTMENT; PRESENTMENT; CHARGE.

GRAND LARCENY. In Criminal Law. By the English law simple larceny was divided into grand and petit: the former was committed by the stealing of property exceeding twelve pence in value; the latter, when the property was of the value of twelve pence or under. This distinction was abolished in England in the reign of George IV., and is recognized by only a few of the United States. Grand larceny was a capital offence,

but clergyable unless attended with certain aggravations. Petty larceny was punishable with whipping, "or some such corporal punishment less than death;" and, being a felony, it was subject to forfeiture, whether upon conviction or flight. See LARCENY.

GRAND SERJEANTY. In English Law. A species of tenure *in capite*, by certain personal and honorable services to the king, called *grand* in respect of the honor of so serving the king. Instances of such services are, the carrying of the king's banner, performing some service at his coronation, etc. The honorable parts of this tenure were retained and its oppressive incidents swept away by stat. 12 Car. II. c. 24; Termes de la Ley; 2 Bla. Com. 73; 1 Steph. Com. 198.

GRANDCHILDREN. The children of one's children. Sometimes these may claim bequests given in a will to children; though, in general, they can make no such claim; 6 Co. 16.

The term grandchildren has been held to include great-grandchildren; 2 Eden, 194; but, *contra*, 3 Barb. Ch. 488, 505; 3 N. Y. 538.

See CHILD; CONSTRUCTION.

GRANDFATHER. The father of one's father or mother. The father's father is called the paternal grandfather; the mother's father is the maternal grandfather.

GRANDMOTHER. The mother of one's father or mother. The father's mother is called the paternal grandmother; the mother's mother is the maternal grandmother.

GRANT. A generic term applicable to all transfers of real property. 3 Washb. R. P. 181, 353.

A transfer by deed of that which cannot be passed by livery. Will. R. P. 147, 149.

An act evidenced by letters patent under the great seal, granting something from the king to a subject. Cruise, Dig. tit. 33, 34.

A technical term made use of in deeds of conveyance of lands to import a transfer. 3 Washb. R. P. 378–380. See CONSTRUCTION.

It was formerly construed into a general warranty, but in England, under the statute 8 & 9 Vict. c. 106, s. 4, it does not imply any covenant, except so far as it may do so by force of any act of parliament. The law is similar in New York and Maine; 59 Me. 160; 40 N. Y. 140; and the doctrine seems generally established in this country that *grant* does not imply a warranty in conveyances of freehold estates, and in leases does not itself imply a warranty, but that any such implication is derived rather from the words of leasing. But this is not universally so; 24 Ill. 529; 39 Mo. 566. See 8 Cow. 36; 4 Wend. 502; CONSTRUCTION.

The term grant was anciently and in strictness of usage applied to denote the conveyance of incorporeal rights, though in the largest sense the term comprehends everything that is granted or passed from one to another, and is now applied to every species of property; 8 & 9 Vict. c. 106, s. 2. Grant is one of the usual words in a feoffment; and a grant differs but little from a feoffment except in the subject-matter; for the operative words used in grants are *dedi et concessi*, "have given and granted." A grant of personalty, or of all a man's interest in any subject matter, is generally called an assignment.

Incorporeal rights are said to lie in grant, and not in livery; for, existing only in idea, in contemplation of law, they cannot be transferred by livery of possession. Of course, at common law, a conveyance in writing was necessary: hence they are said to be in grant, and to pass by the delivery of the deed.

By the word *grant*, in a treaty, is meant not only a formal grant, but any concession, warrant, order, or permission to survey, possess, or settle, whether written or parol, express, or presumed from possession. Such a grant may be made by law, as well as by a patent pursuant to a law; 12 Pet. 410. See 9 Ad. & E. 532; 5 Mass. 472; 9 Pick. 80.

Office grant applies to conveyances made by some officer of the law to effect certain purposes where the owner is either unwilling or unable to execute the requisite deeds to pass the title.

Private grant is a grant by the deed of a private person.

Public grant is the mode and act of creating a title in an individual to lands which had previously belonged to the government.

The public lands of the United States and of the various states have been to a great extent conveyed by deeds or patents issued in virtue of general laws; but many specific grants have also been made, and were the usual method of transfer during the colonial period. See 3 Washb. R. P. 181–208; 4 Kent, 450, 494; 8 Wheat. 543; 6 Pet. 548; 16 *id.* 367.

Uninterrupted possession of land for a period of twenty years or upward, has been often held to raise a presumption of a grant from the state; 4 Harr. (Del.) 521; 20 Ga. 467; 4 Dev. & B. L. 241; 6 Pet. 498; 3 Head. 432.

Among the modes of conveyance included under office grant are levies and sales to satisfy execution creditors, sales by order or decree of a court of chancery, sales by order or license of court, sales for non-payment of taxes, and the like. See Blackw. Tax, Title *passim*; 3 Washb. R. P. 208–231.

The term grant is applied in Scotland to original disposition of land, as when a lord grants land to his tenants; and to gratuitous deeds; in the latter case the donor is said to *grant the deed*, an expression unknown in English law; Moz. & W.

With regard to private grants, see DEED.

GRANT, BARGAIN, AND SELL. Words used in instruments of conveyance of real estate. See CONSTUCTION; 8 Barb. 463; 32 Me. 329; 1 T. B. Monr. 30; 1 Conn. 79; 5 Tenn. 124; 2 Binn. 95; 11 S. & R. 109; 1 Mo. 576; 1 Murph. 343.

GRANTEE. He to whom a grant is made.

GRANTOR. He by whom a grant is made.

GRASSHEARTH. In Old English Law. The name of an ancient customary service of tenants' doing one day's work for their landlord.

GRATIFICATION. A reward given voluntarily for some service or benefit rendered, without being requested so to do, either expressly or by implication.

GRATIS (Lat.). Without reward or consideration.

When a bailee undertakes to perform some act or work *gratis*, he is answerable for his gross negligence if any loss should be sustained in consequence of it; but a distinction exists between non-feasance and misfeasance,—between a total omission to do an act which one gratuitously promises to do, and a culpable negligence in the execution of it: in the latter case he is responsible, while in the former he would not, in general, he bound to perform his contract; 4 Johns. 84; 5 Term, 143; 2 Ld. Raym. 913.

GRATIS DICTUM (Lat.). A saying not required; a statement voluntarily made without necessity.

Mere naked assertions, though known to be false, are not the ground of action, as between vendor and vendee. Thus it is not actionable for a vendor of real estate to affirm falsely to the vendee that his estate is worth so much, that he gave so much for it, etc. But fraudulent misrepresentations of particulars in relation to the estate, inducing the buyer to forbear inquiries he would otherwise have made, are not *gratis dicta;* 6 Metc. (Mass.) 246.

GRATUITOUS CONTRACT. In Civil Law. One the object of which is for the benefit of the person with whom it is made, without any profit, received or promised, as a consideration for it: as, for example, a gift. 1 Bouvier, Inst. n. 709.

GRATUITOUS DEED. One made without consideration; 2 Steph. Com. 47.

GRAVAMEN (Lat.). The grievance complained of; the substantial cause of the action. See Greenl. Ev. § 66. The part of a charge which weighs most heavily against the accused. In England, the word is specially applied to grievance complained of by the clergy to the archbishop and bishops in convocation; Phill. Eccl. 1944.

GRAVE. A place where a dead body is interred.

The violation of the grave, by taking up the dead body, or stealing the coffin or grave clothes, is a misdemeanor at common law; 1 Russ. Cr. 414; and has been made the subject of statutory enactment in some of the states. See 2 Bish. Cr. L. §§ 1188–1190; Dearsl. & B. 169; 19 Pick. 304; 4 Blackf. 328.

A singular case, illustrative of this subject, occurred in Louisiana. A son, who inherited a large estate from his mother, buried her with all her jewels, worth two thousand dollars: he then made a sale of all he inherited from his mother for thirty thousand dollars. After this, a thief broke the grave and stole the jewels, which, after his conviction, were left with the clerk of the court, to be delivered to the owner. The son claimed them, and so did the purchaser of the inheritance: it was held that the jewels, although buried with the mother, belonged to the son, and that they passed to the purchaser by a sale of the whole inheritance; 6 Rob. La. 488. See DEAD BODY.

GRAY'S INN. See INNS OF COURT.

GREAT CATTLE. In English Law. All manner of beasts, except sheep and yearlings. 2 Rolle, 173.

GREAT CHARTER. See MAGNA CHARTA.

GREAT LAW, THE, or "The Body of Laws of the Province of Pennsylvania and Territories thereunto belonging, Past at an Assembly held at Chester, *alias* Upland, the 7th day of the tenth month, called December, 1682."

This was the first code of laws established in Pennsylvania, and is justly celebrated for the provision in its first chapter for liberty of conscience. See Linn's Charter and Laws of Pennsylvania (Harrisburg, 1879), pp. 107, 478, etc.

GREAT SEAL. A seal by virtue of which a great part of the royal authority is exercised. The office of the lord chancellor, or lord keeper, is created by the delivery of the great seal into his custody. There is one great seal for all public acts of state which concern the United Kingdom.

GREAT TITHES. In Ecclesiastical Law. The more valuable tithes: as, corn, hay, and wood. 3 Burn, Eccl. Law, 680, 681; 3 Steph. Com. 127.

GREEN CLOTH. An English board or court of justice, composed of the lord steward and inferior officers, and held in the royal household; so named from the cloth upon the board at which it is held.

GREEN WAX. In English Law. The name of the estreats of fines, issues, and amercements in the exchequer, delivered to the sheriff under the seal of that court, which is made with green wax.

GREMIO. In Spanish Law. The union of merchants, artisans, laborers, or other persons who follow the same pursuits and are governed by the same regulations. The word *guild*, in English, has nearly the same signification.

GREMIUM (Lat.). Bosom. Ainsworth, Dict. *De gremio mittere*, to send from their bosom: used of one sent by an ecclesiastical corporation or body. *A latere mittere*, to send from his side, or one sent by an individual: as, a legate sent by the pope. Du Cange. In English law, an inheritance is said to be *in gremio legis*, in the bosom or under the protection of the law, when it is in abeyance. See IN NUBIBUS.

GRESSUME (variously spelled *Gressame, Gressum, Grossome;* Scotch, *grassum*). **In Old English Law.** A fine due from a copyholder on the death of his lord. Plowd. fol. 271, 285; 1 Stra. 654. Cowel derives it from *gersum.*

In Scotland. *Grassum* is a fine paid for the making or renewing of a lease; Paterson.

GRITHBRECH (Sax. *grith*, peace, and *brych*, breaking). Breach of the king's peace, as opposed to *frithbrech*, a breach of the nation's peace with other nations. Leges Hen. I. c. 36; Chart. Willielm. Conq. Eccles. S. Pauli in Hist. ejusd. fol. 90.

GROSS ADVENTURE. In Maritime Law. A maritime or bottomry loan. It is so called because the lender exposes his money to the perils of the sea, and contributes to the gross or general average. Pothier; Pardessus, Dr. Com.

GROSS AVERAGE. In Maritime Law. That kind of average which falls on the ship, cargo, and freight, and is distinguished from particular average. See AVERAGE.

GROSS NEGLIGENCE. The omission of that care which even inattentive and thoughtless men never fail to take of their own property. Jones, Bailm.; 23 Conn. 437; 3 Hurlst. & C. 337.

Lata culpa, or, as the Roman lawyers most accurately called it, *dolo proxima*, is, in practice, considered as equivalent to *dolus*, or fraud itself. It must not be confounded, however, with fraud; for it may exist consistently with good faith and honesty of intention, according to common-law authorities. 32 Vt. 652; Shearm. & Red. Neg. § 3.

The distinction between degrees of negligence is not very sharply drawn in the later cases. See BAILMENT.

GROSS WEIGHT. The total weight of goods or merchandise, with the chests, bags, and the like, from which are to be deducted tare and tret.

GROSSOME. In Old English Law. A fine paid for a lease. Corrupted from *gersum*. Plowd. fol. 270, 285; Cowel.

GROUND ANNUAL. In Scotch Law. An annual rent of two kinds: *first*, the feuduties payable to the lords of erection and their successors; *second*, the rents reserved for building-lots in a city, where *sub-feus* are prohibited. This rent is in the nature of a perpetual annuity. Bell, Dict.; Erskine, Inst. 11. 3. 52.

GROUND RENT. A rent reserved to himself and his heirs, by the grantor of land in fee-simple, out of the land conveyed. See 9 Watts, 262; 8 W. & S. 185; 2 Am. L. Reg. 577.

In Pennsylvania, it is real estate, and in cases of intestacy goes to the heir; 14 Penn. 444. The interest of the owner of the rent is an estate altogether distinct and of a very different nature from that which the owner of the land has in the land itself. Each is the owner of a fee-simple estate. The one has an estate of inheritance in the rent, and the other has an estate of inheritance in the land out of which the rent issues. The one is an incorporeal inheritance in fee, and the other is a corporeal inheritance in fee; Irwin *v.* Bank of United States, 1 Penn. 349, per *Kennedy*, J. So, the owner of the rent is not liable for any part of the taxes assessed upon the owner of the land out of which the rent issues; 1 Whart. 72; 4 Watts, 98. Being real estate, it is bound by a judgment, and may be mortgaged like other real estate. It is a rent-service; 1 Whart. 337.

A ground-rent, being a rent-service, is, of course, subject to all the incidents of such a rent. Thus, it is distrainable of *common right*, that is, by the common law; Co. Litt. 142 *a*; 9 Watts, 262. So, also, it may be apportioned; 1 Whart. 337. And this sometimes takes place by operation of law, as when the owner of the rent purchases part of the land; in which case the rent is apportioned, and extinguished *pro tanto;* Littleton, 222. And the reason of the extinguishment is that a *rent-service* is given as a return for the possession of the land. Thus, upon the enjoyment of the lands depends the obligation to pay the rent; and if the owner of the rent purchases part of the land, the tenant, no longer enjoying that portion, is not liable to pay rent for it, and so much of the rent as issued out of that portion is, consequently, extinguished. See 2 Bla. Com. 41; 1 Whart. 235, 352; 3 *id.* 197, 365.

At law, the legal ownership of these two estates—that in the rent and that in the land out of which it issues—can coexist only while they are held by different persons or in different rights; for the moment they unite in one person in the same right, the rent is merged and extinguished; 2 Binn. 142; 3 Penn. L. J. 232; 6 Whart. 382; 5 Watts, 457. But if the one estate or intestate be legal and the other equitable, there is no merger; 6 Whart. 283. In equity, however, this doctrine of merger is subject to very great qualification. A merger is not favored in equity; and the doctrine there is that although in some cases, where the legal estates unite in the same person in the same right, a merger will take place *against* the intention of the party whose interests are united (see 3 Whart. 421, and cases there cited), yet, as a general rule, the *intention*, actual or presumed, of such party will govern; and where no intention is expressed, if it appears most for his advantage that a merger should not take place, such will be presumed to have been his intention; and that it is only in cases where it is perfectly indifferent to the party thus interested that, in equity, a merger occurs; 5 Watts, 457; 8 *id.* 146; 4 Whart. 421; 6 *id.* 283; 1 W. & S. 487.

A ground-rent being a freehold estate, created by deed and perpetual by the terms of its creation, no mere lapse of time without demand of payment raises, at common law, a presumption that the estate has been released; 1 Whart. 229.

But this is otherwise in Pennsylvania now, by act of April 27, 1855, sec. 7, P. L. 369, whereby a presumption of a release or extinguishment is created where no payment, claim, or demand is made for the rent, nor any declaration or acknowledgment of its existence made by the owner of the premises subject to the rent, for the period of twenty-

one years. This applies to the estate in the rent, and comprehends the future payments. But independently of this act of assembly, *arrearages* of rent which had fallen due twenty years before commencement of suit might be presumed to have been paid; 1 Whart. 229. These *arrearages* are a lien upon the land out of which the rent issues; but, as a general rule, the lien is discharged by a judicial sale of the land, and attaches to the fund raised by the sale; see 2 Binn. 146; 3 W. & S. 9; 8 *id.* 381; 9 *id.* 189; 4 Whart. 516; 2 Watts, 378; 3 *id.* 288; 1 Penn. 349; 2 *id.* 96.

Ground-rents in Pennsylvania were formerly made irredeemable, usually after the lapse of a certain period after their creation. But now the creation of such is forbidden by statute. Act of 22 April, 1850. But this does not prohibit the reservation of ground-rents redeemable only on the death of a person in whom a life interest in the rents is vested; 11 W. N. Cas. 11. The Act of April 15, 1869, providing for the extinguishment of irredeemable ground-rents, theretofore created, by legal proceedings instituted by the owner of the land, without the consent of the owner of the ground-rent, was declared unconstitutional; 67 Penn. 479.

As ground-rent deeds are usually drawn, the owner of the rent has three remedies for the recovery of the arrearages, viz., by action (of debt or covenant; but debt is now seldom employed), distress, and (for want of sufficient distress) the right to re-enter and hold the land as of the grantor's former estate. See 2 Am. L. Reg. 577; 3 *id.* 65; Cadw. Gr. Rents.

GROUNDAGE. In Maritime Law. The consideration paid for standing a ship in a port. Jacob, Law Dict.

GROWING CROPS. Growing crops of grain, potatoes, turnips, and all annual crops raised by the cultivation of man, are in certain cases personal chattels, and in others, part of the realty. If planted by the owner of the land, they are a part of the realty, but may by sale become personal chattels, if they are fit for harvest, and the sale contemplates their being cut and carried off, and not a right in the vendee to enter and cultivate. So even with trees; 4 Metc. Mass. 580; 9 B. & C. 561; Hob. 173; 1 Atk. 175; 7 N. H. 522; 11 Co. 50. But if the owner in fee conveys land before the crop is severed, the crop passes with the land as appertaining to it; 41 Ill. 466; 33 Penn. 254; 9 Rob. (La.) 256; and the same rule applies to foreclosure sales; 8 Wend. 584; 29 Penn. 68; 42 N. Y. 150; see 20 Am. L. Reg. 615, n. So, if a tenant who holds for a certain time plant annual crops, or even trees in a nursery for the purposes of transplantation and sale, they are personal chattels when fit for harvest; 1 Metc. Mass. 27, 313; 2 East, 68; 4 Taunt. 316, per *Heath*, J. If planted by a tenant for uncertain period, they are regarded, whether mature or not, in many respects as personal property, but liable to become part of the realty if the tenant voluntarily abandons or forfeits possession of the premises; 5 Co. 116 *a*; 5 Halst. 128; Co. Litt. 55; 2 Johns. 418, 421, n. See 2 Dana, 206; 2 Rawle, 161; 1 Washb. R. P. 3.

GUARANTEE. He to whom a guaranty is made. Also, to make oneself responsible for the obligation of another.

The guarantee is entitled to receive payment, in the first place, from the debtor, and, secondly, from the guarantor. He must be careful not to give time, beyond that stipulated in the original agreement, to the debtor, without the consent of the guarantor. The guarantee should, at the instance of the guarantor, bring an action against the principal for the recovery of the debt; 2 Johns. Ch. 554; 17 Johns. 384; 8 S. & R. 116; 10 *id.* 33; 2 Brown, Ch. 579, 582; 2 Ves. 542. But the mere omission of the guarantee to sue the principal debtor will not, in general, discharge the guarantor, 8 S. & R. 112; 6 Binn. 292, 300.

GUARANTOR. He who makes a guaranty.

A guarantor may be discharged by neglect to notify him of non-payment by the principal; but the same strictness is not required to charge him as is required to charge an indorser.

GUARANTY. An undertaking to answer for another's liability, and collateral thereto. A collateral undertaking to pay the debt of another in case he does not pay it. *Shaw*, C. J., 24 Pick. 252.

A provision to answer for the payment of some debt, or the performance of some duty in the case of the failure of some person who, in the first instance, is liable for such payment or performance; 60 N. Y. 438; Bayl. Sur. & Guar. 2.

It is distinguished from suretyship in being a secondary, while that is a primary, obligation; or, as sometimes defined, guaranty is an undertaking that the debtor shall pay; suretyship, that the debt shall be paid, or again, a contract of suretyship creates a liability for the performance of the act in question at the proper time, while the contract of guaranty creates a liability for the ability of the debtor to perform the act; Bayl. Sur. & Guar. 3. Guaranty is an engagement to pay on a debtor's insolvency, if due diligence be used to obtain payment; 52 Penn. 440.

The undertaking is essentially in the alternative. A guarantor cannot be sued as a promisor, as the surety may; his contract must be specially set forth. A guarantor warrants the solvency of the promisor, which an indorser does not; 8 Pick. 423.

At common law, a guaranty could be made by parol; but by the Statute of Frauds, 29 Car. II. c. 3, re-enacted almost in terms in the several states, it is provided, that "No action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, ... unless the agreement upon which such action shall be brought, or some memo-

randum or note thereof, shall be in writing, signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized."

The following classes of promises have been held not within the statute, and valid though made by parol.

First, where there is a liability pre-existent to the new promise.

1. Where the principal debtor is discharged by the new promise being made; 3 Bingh. N. C. 889; 5 Chandl. 61; 28 Vt. 135; 29 *id.* 169; 5 Cush. 488; 8 Gray, 233; 1 Q. B. 933; 8 Johns. 376; 13 Md. 141; 4 B. & P. 124; Browne, Stat. Fr. §§ 166, 193; and an entry of such discharge in the creditor's books is sufficient proof; 3 Hill, So. C. 41. This may be done by agreement to that effect; 1 Allen, 405; by novation, by substitution, or by discharge under final process; 1 B. & Ald. 297; but mere forbearance, or an agreement to forbear pressing the claim, is not enough; 1 Smith, Lead. Cas. 387; 6 Vt. 666.

2. Where the principal obligation is void or not enforceable when the new promise is made, and this is contemplated by the parties. But if not so contemplated, then the new promise is void; Burge, Surety, 10; 2 Ld. Raym. 1085; 1 Burr. 373. But see, on this point, 17 Md. 283; 13 Johns. 175; 6 Ga. 14.

3. So where the promise does not refer to the particular debt, or where this is unascertained; 1 Wils. 305.

In these three classes the principal obligation ceases to exist after the new promise is made.

4. Where the promisor undertakes for his own debt. But the mere fact that he is indebted will not suffice, unless his promise refers to that debt; nor is it sufficient if he subsequently becomes indebted on his own account, if not indebted when he promises, or if it is then contingent; 4 Hill, N. Y. 211. And if his own liability is discharged or non-existent, the promise is within the statute; 14 Penn. 473.

5. Where the new promise is in consideration of property placed by the debtor in the promisor's hands; 1 Gray, 391; 41 Me. 559.

6. Where the promise does not relate to the promisor's property, but to that of the debtor in the hands of the promisor.

7. Where the promise is made to the debtor, not the creditor; because this is not the debt of "another" than the promisee; 1 Gray, 76; 11 Ad. & E. 438.

8. Where the creditor surrenders a lien on the debtor or his property, which the promisor acquires or is benefited by; Fell, Guar. c. 2; Add. Cont. 38; 7 Johns. 463; 3 Burr. 1886; 2 B. & Ald. 613; 21 N. Y. 412; but not so where the surrender of the lien does not benefit the promisor; 3 Metc. Mass. 396; 21 N. Y. 412.

In the five last classes, the principal debt may still subsist concurrently with the new promise, and the creditor will have a double remedy; but the fulfilment of the new promise will discharge the principal debt, because he can have but one satisfaction. The repeated dicta, that if the principal debt subsists, the promise is collateral and within the statute, are not sustainable; 30 Vt. 641. But the general doctrine now is that the transaction must amount to a purchase, the engagement for the debt being the consideration therefor, in whole or in part; 1 Gray, 391; 5 Cush. 488.

Second, if the new promise is for a liability then first incurred, it is original, if exclusive credit is given to the promisor; 5 Allen, 370; 13 Gray, 613; 28 Conn. 544; Browne, Stat. Fr. § 195. Whether exclusive credit is so given, is a question of fact for the jury; 7 Gill, 7. Merely charging the debtor on a book-account is not conclusive.

Whether promises merely to indemnify come within the statute, is not wholly settled; Browne, Stat. Fr. § 158. In many cases they are held to be original promises, and not within the statute; 15 Johns. 425; 4 Wend. 657. But few of the cases, however, have been decided solely on this ground, most of them falling within the classes of original promises before specified. On principle, such contracts seem within the statute if there is a liability on the part of any third person to the promisee. If not, these promises would be original under class seven, above. Where the indemnity is against the promisor's own default, he is already liable without his promise to indemnify; and to make the promise collateral would make the statute a covert fraud; 10 Ad. & E. 453; 1 Gray, 391; 10 Johns. 242; 1 Ga. 294; 5 B. Monr. 382; 20 Vt. 205; 10 N. H. 175; 1 Conn. 519; 5 Me. 504.

Third, guaranties may be given for liabilities thereafter to be incurred, and will attach when the liability actually accrues. In this class the promise will be original, and not within the statute, if credit is given to the promisor exclusively; 2 Term, 80; 1 Cowp. 227. But where the future obligation is contingent merely, the new promise is held not within the statute, on the ground that there is no principal liability when the collateral one is incurred; Browne, Stat. Fr. § 196. But this doctrine is questionable if the agreement distinctly contemplates the contingency; 1 Cra. C. C. 77; 5 Hill, N. Y. 483. An offer to guarantee must be accepted within a reasonable time; but no notice of acceptance is required if property has been delivered under the guaranty; 8 Gray, 211; 2 Mich. 511.

Guaranty may be made for the tort as well as the contract of another, and then comes under the term miscarriage in the statute; 2 B. & Ald. 613; 2 Day, 457; 1 Wils. 305; 9 Cow. 154; 14 Pick. 174. All guaranties need a consideration to support them, none being presumed as in case of promissory notes; and the consideration must be expressed in a written guaranty; 3 Johns. 310; 21 N. Y. 316; 5 East, 10; 45 Ind. 478. Forbearance to sue is good consideration; 1 Kebl. 114; Cro. Jac.

683; 3 Bulstr. 206; Browne, Stat. Fr. § 190; 1 Cow. 99; 4 Johns. 257; 6 Conn. 81. Where the guaranty is contemporaneous with the principal obligation, it shares the consideration of the latter; 8 Johns. 29; 1 Paine, 580; 14 Wend. 246; 2 Pet. 170; 3 Mich. 396; 36 N. H. 73.

A guaranty may be for a single act, or may be continuous. The cases are conflicting, as the question is purely one of the intention of the particular contract. The tendency in this country is said to be against construing guarantees as continuing, unless the intention of the parties is so clear as not to admit of a reasonable doubt; Bayl. Sur. & Guar. 7, citing 32 Ohio St. 177; s. c. 30 Am. R. 572; Lent *v.* Padleford, 2 Am. Lead. Cas. 141; 24 Wend. 82. If the object be to give a standing credit to be used from time to time, either indefinitely or for a fixed period, the liability is continuing; but if no time is fixed and nothing indicates the continuance of the obligation, the presumption is in favor of a limited liability as to time; Bayl. Sur. & Guar. 7; 62 Barb. 351.

The authorities are not agreed as to the negotiability of a guaranty. It is held that a guaranty which is a separate and distinct instrument is not negotiable separately; 3 W. & S. 272; 4 Chandl. 151; 14 Vt. 233. But if a guaranty is on a negotiable note, it is negotiable with the note; and if the note is to bearer, the guaranty has been held to be negotiable in itself; 24 Wend. 456; 6 Humphr. 261. But an equitable interest passes by transfer, and the assignee may sue in the name of the assignor; 12 S. & R. 100; 20 Vt. 506. It has been held that no suit can be maintained upon a guaranty except by the person with whom it was made; Bayl. Sur. & Guar. 14; 8 Watts, 361; but it has also been held that a guaranty of a note may be sued on by any person who advances money on it, but that it is not negotiable unless made upon the note the payment of which it guarantees; Bayl. Sur. & Guar. 15; 26 Wend. 425.

It is held that a guaranty is not enforceable by others than those to whom it is directed; 3 McLean, 279; 1 Gray, 317; 13 *id.* 69; 6 Watts, 182; 10 Ala. N. S. 793; although they advance goods thereon; 4 Cra. 224.

In one case it was held that the guarantor was not bound where the guaranty was addressed to two and acted on by one of them only; 3 Tex. 199. It was held, also, that the guaranty was not enforceable by the survivor of two to whom it was addressed, for causes occurring since the decease of the other; 7 Term, 254.

In the case of promissory notes, a distinction has sometimes been made between a guaranty of payment and a guaranty of collectibility; the latter requiring that the holder shall diligently prosecute the principal debtor without avail; 4 Wisc. 190; 25 Conn. 576; 2 Hill, N. Y. 139; 6 Barb. 547; 26 Me. 358; 4 Conn. 527.

It has in some cases been held that an indorsement in blank on a promissory note by a stranger to the note was *primâ facie* a guaranty.

A guarantor is discharged by a material alteration in the contract without his consent.

The guarantor may also be discharged by the neglect of the creditor in pursuing the principal debtor. The same strictness as to demand and notice is not necessary to charge a guarantor as is required to charge an indorser; but in the case of a guarantied note the demand on the maker must be made in a reasonable time, and if he is solvent at the time of the maturity of the note, and remains so for such reasonable time afterwards, the guarantor does not become liable for his subsequent insolvency; 8 East, 242; 2 H. Blackst. 612; 18 Pick. 534. Notice of non-payment must also be given to the guarantor; 2 Ohio, 430; but where the name of the guarantor of a promissory note does not appear on the note, such notice is not necessary unless damage is sustained thereby, and in such case the guarantor is discharged only to the extent of such damage; 12 Pet. 497. It is not necessary that an action should be brought against the principal debtor; 7 Pet. 113. See, also, 2 Watts, 128; 11 Wend. 629. From the close connection of guaranty with suretyship, it is convenient to consider many of the principles common to both under the head of suretyship, which article see.

Consult Fell on Guaranty; Burge, Theobald, on Suretyship; Browne on Statute of Frauds; Addison, Chitty, Parsons, Story, on Contracts.

GUARDIAN. One who legally has the care and management of the person, or the estate, or both, of a child during its minority. Reeve, Dom. Rel. 311.

A person having the control of the property of a minor without that of his person is known in the civil law, as well as in some of the states of the United States, by the name of curator. 1 Leç. él. du Droit Civ. Rom. 241; Mo. Rev. Stat. 1855, 823.

Guardian by chancery. This guardianship, although unknown at the common law, is well established in practice now. It grew up in the time of William III., and had its foundation in the royal prerogative of the king as *parens patriæ*. 2 Fonbl. Eq. 246.

This power the sovereign is presumed to have delegated to the chancellor; 10 Ves. 63; 2 P. Wms. 118; Reeve, Dom. Rel. 317. By virtue of it, the chancellor appoints a guardian where there is none, and exercises a superintending control over all guardians, however appointed, removing them for misconduct and appointing others in their stead; Co. Litt. 89; 2 Bulstr. 679; 1 P. Wms. 703; 8 Mod. 214; 1 Ves. 160; 2 Kent, 227.

This power, in the United States, resides in courts of equity; 1 Johns. Ch. 99; 2 *id.* 439; and in probate or surrogate courts; 2 Kent, 226; 30 Miss. 458; 3 Bradf. Surr. 133.

Guardian by nature is the father, and, on his death, the mother; 2 Kent, 220; 2 Root, 320; 7 Cow. 36; 2 Wend. 158; 4 Mass. 675.

This guardianship, by the common law, extends only to the person, and the subject of it is the heir apparent, and not the other children,—not even the daughter when there are no sons; for they are not heirs apparent, but presumptive heirs only, since their heirship may be defeated by the birth of a son after their father's decease. But as all the children male and female equally inherit with us, this guardianship extends to all the children, as an inherent right in their parents during their minority; 2 Kent, 220.

The mother of a bastard child is its natural guardian; 6 Blackf. 357; 2 Mass. 109; 12 *id.* 383; but not by the common law; Reeve, Dom. Rel. 314, note. The power of a natural guardian over the person of his ward is perhaps better explained by reference to the relation of parent and child. See DOMICIL. It is well settled that the court of chancery may, for just cause, interpose and control the authority and discretion of the parent in the education and care of his child; 5 East, 221; 8 Paige, Ch. 47; 10 Ves. 52.

A guardian by nature is not entitled to the control of his ward's personal property; 34 Ala. N. S. 15, 565; 1 P. Wms. 285; 7 Cow. 36; 6 Conn. 474; 7 Wend. 354; 3 Pick. 213; unless by statute. See 19 Mo. 345. The father must support his ward; 2 Bradf. Surr. 341. But where his means are limited, the court will grant an allowance out of his child's estate; *id.*; 1 Brown, Ch. 387. But the mother, if guardian, is not obliged to support her child if it has sufficient estate of its own; nor is she entitled, like the father, when guardian, to its services, unless she is compelled to maintain it.

A father as guardian by nature has no right to the real or personal estate of his child; that right, whenever he has it, must be as a guardian in socage, or by some statutory provision; 15 Wend. 631.

Guardian by nurture. This guardianship belonged to the father, then to the mother.

The subject of it extended to the younger children, not the heirs apparent. In this country it does not exist, or, rather, it is merged in the higher and more durable guardianship by nature, because all the children are heirs, and, therefore, the subject of that guardianship; 2 Kent, 221; Reeve, Dom. Rel. 315; 6 Ga. 401. It extended to the person only; 6 Conn. 494; 40 L. & Eq. 109; and terminated at the age of fourteen; 1 Bla. Com. 461.

Guardian in socage. This guardianship arose when socage lands descended to an infant under fourteen years of age; at which period it ceased if another guardian was appointed, otherwise it continued; 5 Johns. 66.

The person entitled to it by common law was the next of kin, who could not by any possibility inherit the estate; 1 Bla. Com. 461. Although formerly recognized in New York, it was never common in the United States; 5 Johns. 66; 7 *id.* 157; because, by the statutes of descents generally in force in this country, those who are next of kin may eventually inherit. Wherever it has been recognized, it has been in a form differing materially from its character at common law; 15 Wend. 631. Such guardian was also guardian of the person of his ward as well as his estate; Co. Litt. 87, 89. Although it did not arise unless the infant was seized of lands held in socage, yet when it did arise it extended to hereditaments which do not lie in tenure and to the ward's personal estate. See Hargrave's note 67 to Co. Litt. This guardian could lease his ward's estate and maintain ejectment against a disseisor in his own name; 2 Bacon, Abr. 683. A guardian in socage cannot be removed from office, but the ward may supersede him at the age of fourteen, by a guardian of his own choice; Co. Litt. 89.

There was anciently a guardianship by chivalry at the common law, where lands came to an infant by descent which were holden by knight-service; Co. Litt. 88, 11, note. That tenure being abolished by statute Car. II., the guardianship has ceased to exist in England, and has never had any existence in the United States.

Guardians by statute are of two kinds: *first*, those appointed by deed or will; *second*, those appointed by court in pursuance of some statute.

Testamentary guardians are appointed by the deed or last will of the father; and they supersede the claims of all other guardians, and have control of the person and the real and personal estate of the child till he arrives at full age.

This power of appointment was given to the father by the stat. 12 Car. II. c. 24, which has been pretty extensively adopted in this country. Under it, the father might thus dispose of his children, born and unborn; 7 Ves. 315; but not of his grandchildren; 5 Johns. 278. Nor does it matter whether the father is a minor or not; 2 Kent, 225. It continues during the minority of a male ward, both as to his estate and person, notwithstanding his marriage; Reeve, Dom. Rel. 328; 2 Kent, 224; 4 Johns. Ch. 380. There seems to be some doubt as to whether marriage would determine it over a female ward; 2 Kent, 224. It is more reasonable that it should, inasmuch as the husband acquires in law a right to the control of his wife's person. But it would seem that a person marrying a testamentary guardian is not entitled to the money of the ward; 12 Ill. 431. In England and most of the United States a mother cannot appoint a testamentary guardian, nor can a putative father, nor a person *in loco parentis*; 1 Bla. Com. 462, n.; but by statute in Illinois she may make an appointment, if the father has not done so, provided she be not remarried after his death; 2 Kent, 225. In New York, the consent of the mother is required to a testamentary appointment by the father; Schoul. Dom. Rel. 400.

Guardians appointed by court. The greater number of guardians among us, by far, are those appointed by court, in conformity with statutes which regulate their powers and duties. In the absence of special provisions, their rights and duties are governed by the general law on the subject of guardian and ward.

Appointment of guardians. All guardians of infants specially appointed must be appointed by the infant's parent; or by the infant himself; or by a court of competent jurisdiction.

After the age of fourteen, the ward is entitled to choose a guardian, at common law, and generally by statute; Reeve, Dom. Rel. 320; 15 Ala. N. S. 687; 30 Miss. 458. His choice is subject, however, to the rejection of the court for good reason, when he is entitled to choose again; 14 Ga. 594. So guardianship by the sole appointment of the infant cannot now be said to exist. If the court appoint one before the age of choice, the infant may appear and choose one at that age, with-

out any notice to the guardian appointed; 30 Miss. 458; 15 Ala. N. S. 687; But if none be chosen, then the old one acts. It seems that in Indiana the old one can be removed only for cause shown; in which case, of course, he is entitled to notice; 8 Ind. 307. A probate, surrogate, or county court has no power to appoint, unless the minor resides in the same county; 2 Bradf. Surr. 214; 7 Ga. 362; 9 Tex. 109; 16 Ala. N. S. 759; 27 Mo. 280; but where the ward is a non-resident, guardianship is frequently recognized for the collection and preservation of his estate in the jurisdiction, and in such cases, the court where the property is situated will appoint a guardian, the existence of the property determining the jurisdiction; 4 Allen, 466; 27 E. L. & Eq. 249. Persons residing out of the jurisdiction will not usually be appointed guardians; but this rule is not invariable, except in those states which require resident guardians by statute; Schoul. Dom. Rel. 419.

It is a subject of much doubt whether a married woman may be a guardian; while there are cases which sustain their acts while acting as guardians, clear precedents for their actual appointment are wanting. See 2 Dougl. 433. It has been held, however, that a married woman may be co-guardian with a man, though her sole appointment is improper; L. R. 1 Ch. 387; see 29 Miss. 195; 1 Paige, 488; 19 Ind. 88. A single woman by her marriage loses her guardiauship, it would seem; but she may be reappointed; 2 Kent, 225, n. *b*; 2 Dougl. 433. Where there is a valid guardianship unrevoked, the appointment of another is void; 23 Miss. 550.

A guardian to a lunatic cannot be appointed till after a writ *de lunatico inquirendo;* 21 Ala. N. S. 504. An order removing a guardian is equivalent to an order to pay over the money in his hands to his successor; 9 Mo. 225, 227. In some states the court is authorized to revoke for non-residence of the guardian; 9 Mo. 227.

Powers and liabilities of guardians. The relation of a guardian to his ward is that of a trustee in equity, and bailiff at law; 2 Md. 111. It is a trust which he cannot assign; 1 Pars. Contr. 116. He will not be allowed to reap any benefit from his ward's estate; 2 Comyns, 230, except for his legal compensation or commission; but must account for all profits, which the ward may elect to take or charge interest on the capital used by him; 17 Ala. N. S. 306. He can invest the money of his ward in real estate only by order of court; 3 Ind. 326; 6 *id.* 628; 3 Yerg. 336; 21 Miss. 9; 38 Me. 47. And he cannot convert real estate into personalty without a similar order; 25 Mo. 548; 4 Jones, 15; 16 B. Monr. 289; 1 Rawle, 293; 1 Ohio, 232; 1 Dutch. 121; 2 Kent, Com. 230. The law does not favor the conversion of the real estate of minors; 14 Penn. 372; but if it be clearly to the interest of a minor that his real estate be sold and converted into money, the court will award an order of sale, notwithstanding that in the event of his death during minority, the proceeds would go to other parties than those to whom the land would have descended had it not been converted; 6 Phila. 157. The rule is different in England; there land converted into money, or money into land, retains its character of land or money, as the case may be, during the nonage of the minor; 6 Ves. 6; 11 Ill. 278.

He may lease the land of his ward; 1 Pars. Contr. 114; 2 Mass. 56; but if the lease extends beyond the minority of the ward, the latter may avoid it on coming of age; 1 Johns. Ch. 561; 10 Yerg. 160; 2 Wils. 129; 7 Johns. 154; 5 Halst. 133. He may sell his ward's personalty without order of court; 27 Ala. N. S. 198; 19 Mo. 345; and dispose of and manage it as he pleases; 2 Pick. 243. He is required to put the money out at interest, or show that he was unable to do this; 21 Miss. 9; 2 Wend. 424; 1 Pick. 527; 18 *id.* 1; 1 Johns. Ch. 620; 5 *id.* 497; 7 W. & S. 48; 13 E. L. & Eq. 140. If he spends more than the interest and profits of the estate in the maintenance and education of the ward without permission of the court, he may be held liable for the principal thus consumed; 1 S. & M. 545; 26 Miss. 393; 6 B. Monr. 1292; 2 Strobh. 40; 2 Sneed, 520.

If he erects buildings on his ward's estate out of his own money, without order of court, he will not be allowed any compensation; 11 Barb. 22; 8 *id.* 48; 11 Penn. 326; 23 Miss. 189; 24 *id.* 204. He is not chargeable with the services of his wards if for their own benefit he requires them to work for him; 12 Gratt. 608. A married woman guardian can convey the real estate of her ward without her husband joining; 2 Dougl. 433. On marriage of a female minor in Mississippi, her husband, although a minor, is entitled to receive her estate from her guardian; 3 Miss. 893.

Joint guardians may sue together on account of any joint transaction founded on their relation to the ward, even after the relation ceases; 4 Pick. 283; and where one guardian consents to his co-guardian's misapplication of funds, he is liable; 11 S. & R. 66; 18 Penn. 175. Guardians like other trustees—executors and administrators excepted—may portion out the management of the property to suit their respective tastes and qualifications, while neither parts irrevocably with the control of the whole; and in such case each is chargeable with no more than what he received, unless unwarrantable negligence in superintending the others' acts can be shown; 8 W. & S. 143; and the discharge of one who has received no part of the estate relieves him from liability; 33 Penn. 466.

Contracts between guardian and ward immediately after the latter has attained his majority are unfavorably regarded by the courts, and will be set aside where they redound to the profit of the guardian; 4 S. & R. 114; 5 Binn. 8; 8 Md. 230; 28 Miss. 737; 14 B. Monr. 638; 12 Barb. 84; 10

Ala. N. S. 400. Neither is he allowed to purchase at the sale of his ward's property; 2 Jones, Eq. 285; 22 Barb. 167. But the better opinion is that such sale is not void, but voidable only; 2 Gray, 141; 10 Humphr. 275. He is not allowed, without permission of court under some statute authority, to remove his ward's property out of the state; 24 Ala. N. S. 486. He cannot release a debt due his ward; 1 J. J. Marsh. 441; 11 Mo. 649; although he may submit a claim to arbitration; 22 Miss. 118; 11 Me. 326; 6 Pick. 269; Dy. 216; 1 Ld. Raym. 246. He cannot by his own contract bind the person or estate of his ward; 6 Mass. 58; 1 Pick. 314; nor avoid a beneficial contract made by his ward; 13 Mass. 237; Co. Litt. 17 *b*, 89 *a*.

He is entitled to the care and custody of the person of his ward; 7 Humphr. 111; 4 Bradf. Surr. 221. If a female ward marry, the guardianship terminates both as to her person and property. It has been thought to continue over her property if she marries a minor. If a male ward marries, the guardianship continues as to his estate, though it has been held otherwise as to his person. If he marries a female minor, it is said that his guardian will also be entitled to her property; Reeve, Dom. Rel. 328; 2 Kent, 226.

A guardian may change the residence of his ward from one county to another in the same state. But it seems that the new county may appoint another guardian; 4 Bradf. Surr. 221. Whether he has the right to remove his ward into a foreign jurisdiction has been a disputed question. By the common law, his authority both over the person and property of his ward was strictly local; 1 Johns. Ch. 156; 1 N. H. 193; 12 Wheat. 169; 10 Miss. 532. And this is the view maintained in most of the states. See Story, Confl. Laws, § 540. But see, on this question, 5 Paige, Ch. 596; 8 Ala. N. S. 789; 11 *id.* 461; 18 *id.* 34; 11 Ired. 36; 9 Md. 227; 3 Mer. 67; 5 Pick. 20. DOMICIL.

Nor can a guardian in one state maintain an action in another for any claim in which his ward is interested; 11 Ala. N. S. 343; 18 Miss. 529; Story, Confl. Laws, § 499. See LEX REI SITÆ. He cannot waive the rights of his ward,—not even by neglect or omission; 2 Vern. 368; 14 Ill. 417. No guardian, except a father, is bound to maintain his ward at his own expense. It is discretionary with a court whether to allow a father any thing out of his child's estate for his education and maintenance; Reeve, Dom. Rel. 324; 6 Ind. 66.

Rights and liabilities of wards. A ward owes obedience to his guardian, which a court will aid the guardian in enforcing; 1 Stra. 167; 3 Atk. 721. The general rule is that the ward's contracts are voidable; 13 Mass. 237; 14 *id.* 457; yet there are some contracts so clearly prejudicial that they have been held absolutely void: such as contracts of surety; 4 Conn. 376.

A ward cannot marry without the consent of his or her guardian; Reeve, Dom. Rel. 327. And any one marrying or aiding in the marriage of a ward without such consent is guilty of contempt of court; 2 P. Wms. 562; 3 *id.* 116; but this whole subject is peculiar to the laws of England and has no application in the United States; Schoul. Dom. Rel. 517. Infants are liable for their torts in the same manner as persons of full age; 5 Hill, N. Y. 391; 3 Wend. 391; 9 N. H. 441. A ward is entitled to his own earnings; 1 Bouvier, Inst. 349. He attains his majority the day before the twenty-first anniversary of his birthday; 3 Harring. 557; 4 Dana, 597; 1 Salk. 44. He can sue in court only by his guardian or *prochein ami;* 4 Bla. Com. 464. He could not bring an action at law against his guardian, but might file a bill in equity calling him to account; 2 Vern. 342; 3 P. Wms. 119; 3 Atk. 25; 1 Ves. 91. By the practice in chancery, he was allowed one year to examine the accounts of his guardian after coming of age; 7 Paige, 46. The statute of limitations will not run against him during the guardianship; 34 Ala. N. S. 15. But see LIMITATIONS.

Sale of infant's lands. It is probable that the English court of chancery did not have the inherent original power to order the sale of minors' lands; 2 Ves. 23; 1 Moll. 525. But, with the acquiescence of parliament, it claims and exercises that right for the purpose of maintaining and educating the ward. This power is not conceded as belonging to our courts of chancery in this country by virtue of their equity jurisdiction, nor to our probate courts as custodians of minors; 6 Hill, 415; 2 Kent, 229, n. *a*. It must be derived from some statute authority; 27 Ala. N. S. 198; 7 Johns. Ch. 154; 2 Pick. 243; Ambl. 419.

It has been a much-disputed question whether an infant's lands can be sold by special act of the legislature. On the ground that the state is the supreme guardian of infants, this power of the legislature has been sustained where the object was the education and support of the infant; 29 Miss. 146; 30 *id.* 246; 5 Ill. 127; 20 Wend. 365; 8 Blackf. 10; 16 Mass. 326. So it has been sustained where the sale was merely advantageous to his interest; 11 Gill & J. 87; 14 S. & R. 435. There has been some opposition on the ground that it is an encroachment on the judiciary; 4 N. H. 565, 575; 10 Yerg. 59. Such sales have been sustained where the object was to liquidate the ancestor's debts; 4 T. B. Monr. 95. This has been considered questionable in the extreme; 10 Am. Jur. 297; 10 Yerg. 59; *contra*, 16 Ill. 548. It has also been exercised in the case of idiots and lunatics, and sustained on the same reasons as in the case of infants; 7 Metc. 388.

By statute, we have also guardians for the insane and for spendthrifts; 2 Barb. 153; 8 Ala. N. S. 796; 18 Me. 384; 8 N. H. 569; 19 Pick. 506. This guardian is sometimes

designated as the committee; Schoul. Dom. Rel. 389.

GUARDIAN AD LITEM. A guardian appointed to represent the ward in legal proceedings to which he is a party defendant.

The appointment of such is incident to the power of every court to try a case; 2 Cow. 430; and the power is then confined to the particular case at bar; Co. Litt. 89, n. 16. His duty is to manage the interest of the infant when sued. In criminal cases no guardian is appointed: the court acts as guardian; Reeve, Dom. Rel. 318. A guardian *ad litem* cannot be appointed till the infant has been brought before the court in some of the modes prescribed by law; 16 Ala. N. S. 509; 1 Swan, 75; 2 B. Monr. 453. Such guardian cannot waive service of process; 2 Ind. 74; 9 *id.* 48. The writ and declaration in actions at law against infants are to be made out as in ordinary cases. In English practice where the defendant neglects to appear, or appears otherwise than by guardian, the plaintiff may apply for and obtain a summons calling on him to appear by guardian within a given time; otherwise the plaintiff may be at liberty to proceed as in other cases, having had a nominal guardian assigned to the infant; Macphers. Inf. 359. A like rule prevails in New York and other states; 6 Cow. 50; 12 N. H. 515; Schoul. Dom. Rel. 596.

The omission to appoint a guardian *ad litem* does not render the judgment void, but only voidable; 8 Metc. 196. It will be presumed, where the chancellor received the answer of a person as guardian *ad litem*, that he was regularly appointed, although it does not appear of record; 19 Miss. 418. See 2 Swan, 197. It is error to decree the sale of a decedent's property on the petition of the representatives, without the previous appointment of a guardian *ad litem* for the infant heirs; 16 Ala. N. S. 41. Where the general guardian petitions for a sale of his ward's lands, the court must appoint a guardian *ad litem;* 18 B. Monr. 779; 21 Ala. N. S. 363; 30 Miss. 258; 1 Ohio St. 544.

It seems that a guardian *ad litem* can elect whether to come into hotch-pot; 15 Ala. 85. An appearance of the minor in court is not necessary for the appointment of a guardian to manage his interest in the suit; 11 E. L. & Eq. 156; 15 *id.* 317. If an infant comes of age pending the suit, he can assert his rights at once for himself, and if he does not he cannot generally complain of the acts of his guardian *ad litem;* 1 Metc. (Ky.) 602; 50 Me. 62; 48 Wisc. 89.

GUARDIANSHIP. The power or protective authority given by law, and imposed on an individual who is free and in the enjoyment of his rights, over one whose weakness on account of his age renders him unable to protect himself.

GUARENTIGIO. In Spanish Law. A term applicable to the contract or writing by which courts of justice are empowered to execute and carry into effect a contract in the same manner as if it were decreed by the court after the usual legal formalities. This clause, though formerly inserted in contracts of sale, etc., stipulating the payment of a sum of money, is at present usually omitted, as courts of justice ordinarily compel the parties to execute all contracts made, by authentic acts, that is, acts passed before a notary, in the presence of two witnesses.

GUBERNATOR (Lat.). A pilot of a ship.

GUERRILLA PARTY (Span. *guerra*, war; *guerrilla*, a little war).

In Military Law. Self-constituted sets of armed men, in times of war, who form no integrant part of the organized army, do not stand on the regular pay-roll of the army, or are not paid at all, take up arms and lay them down at intervals, and carry on petty war, chiefly by raids, extortion, destruction, and massacre. Lieber, Guerr. Part. 18. See Halleck, Int. Law, 386; Woolsey, Int. Law, 299.

Partisan, free-corps, and guerrilla are terms resembling each other considerably in signification; and, indeed, partisan and guerrilla are frequently used in the same sense. See Halleck, Int. Law, 386.

Partisan corps and free-corps both denote bodies detached from the main army; but the former term refers to the action of the troop, the latter to the composition. The partisan leader commands a corps whose object is to injure the enemy by action separate from that of his own main army; the partisan acts chiefly upon the enemy's lines of connection and communication, and outside of or beyond the lines of operation of his own army, in the rear and on the flanks of the enemy. But he is part and parcel of the army, and, as such, considered entitled to the privileges of the law of war so long as he does not transgress it. Free corps, on the other hand, are troops not belonging to the regular army, consisting of volunteers generally raised by individuals authorized to do so by the government, used for petty war, and not incorporated with the *ordre de bataille*. The men composing these corps are entitled to the benefit of the laws of war, under the same limitations as the partisan corps.

Guerrilla-men, when captured in fair fight and open warfare, should be treated as the regular partisan is, until special crimes, such as murder, or the killing of prisoners, or the sacking of places, are proved upon them.

The law of war, however, would not extend a similar favor to small bodies of armed countrypeople near the lines, whose very smallness shows that they must resort to occasional fighting and the occasional assuming of peaceful habits and brigandage; Lieber, Guerr. Part. 20.

GUEST. A traveller who stays at an inn or tavern with the consent of the keeper. Bacon, Abr. *Inns*, C 5; 8 Co. 32.

And if, after taking lodgings at an inn, he leaves his horse there and goes elsewhere to lodge, he is still to be considered a guest; 26 Vt. 316; but not if he merely leaves goods

for keeping which the landlord receives no compensation; 1 Salk. 388; 3 Ld. Raym. 866; Cro. Jac. 188. And where one leaves his horse with an innkeeper with no intention of stopping at the inn himself, he is not a guest of the inn, and the liability of the landlord is simply that of an ordinary bailee for hire; 68 Md. 489; 33 N. Y. 577. The length of time a man is at an inn makes no difference, whether he stays a day, a week, or a month, or longer, or only for temporary refreshments, so always that, though not strictly *transiens*, he retains his character as a traveller; 5 Term, 273; 5 Barb. 560. But if a person comes upon a special contract to board at an inn, he is not, in the sense of the law, a guest, but a boarder; Bacon, Abr. *Inns*, C 5; Story, Bailm. § 477; but this is a question of fact to be determined by a jury; 33 Wisc. 118. The payment of a stipulated sum per week does not of itself change the relation of a party from that of a guest to that of a lodger; 7 Cush. 417; 33 Cal. 557; 20 Alb. L. J. 64.

Innkeepers are generally liable for all goods belonging to the guest brought within the inn. It is not necessary that the goods should have been in the special keeping of the innkeeper to make him liable. This rule is founded on principles of public utility, to which all private considerations ought to yield; 2 Kent, 459; 14 Johns. 175; Dig. 4. 9. 1; 3 B. & Ald. 283; 1 Holt, N. P. 209; 1 Bell, Comm. 469; 1 Sm. Lead. Cas. 47; 14 Barb. 193; 62 Penn. 92; and the responsibility extends to the loss from whatever cause it may have arisen, except the default of the traveller himself, the act of God, or the public enemy; Sanders, Neg. 212; 2 Story, Contr. § 909; but see *contra* as to accidental fire, 30 Mich. 259; s. c. 18 Am. Rep. 127, note.

GUEST-TAKER. See AGISTER.

GUIDON DE LA MER. The name of a treatise on maritime law, written in Rouen in Normandy in 1671, as is supposed. It was received on the continent of Europe almost as equal in authority to one of the ancient codes of maritime law. The author of this work is unknown. This tract or treatise is contained in the "Collection de Lois maritimes," by J. M. Pardessus, vol. 2, p. 371 *et seq.*

GUILD, GILD. A brotherhood or company governed by certain rules and orders made among themselves by king's license; a corporation, especially for purposes of commerce; so called because on entering the *guild* the members pay an assessment or tax (*gild*) towards defraying its charges. T. L.; Du Cange. A guild held generally more or less property in common,—often a hall, called a *guild-hall*, for the purposes of the association. The name of *guild* was not, however, confined to mercantile companies, but was applied also to religious, municipal, and other corporations. A mercantile meeting of a guild was called a *guild merchant*. A friborg (see FRIDBORG), that is, among the Saxons, ten families' mutual pledges for each other to the king. Spelman. See 3 Steph. Com. 31; Turner's Hist. Ang. Sax. v. iii. p. 98.

GUILD RENTS.

Rents payable to the crown by any guild, or such as formerly belonged to religious guilds, and came to the crown on the dissolution of the monasteries; Toml.

GUILD HALL (Law Lat. *gildhalla*, variously spelled *ghildhalla*, *guihalla*, *guihaula*; from Sax. *gild*, payment, company, and *halla*, hall). A place in which are exposed goods for sale. Charter of Count of Flanders; Hist. Guinensi, 202, 203; Du Cange. The hall of a guild or corporation. Du Cange; Spelman: *e. g.*, *Gildhalla Teutonicorum*. The chief hall of the city of London, where the mayor and commonalty hold their meetings. The hall of the merchants of the Hanseatic League in London, otherwise called the "Stilyard." *Id.*

GUILT. In Criminal Law. That which renders criminal and liable to punishment.

That disposition to violate the law, which has manifested itself by some act already done. The opposite of innocence. See Rutherf. Inst. b. 1, c. 18, s. 10.

In general, every one is presumed innocent until guilt has been proved; but in some cases the presumption of guilt overthrows that of innocence; as, for example, where a party destroys evidence to which the opposite party is entitled. The spoliation of papers material to show the neutral character of a vessel furnishes strong presumption against the neutrality of the ship; 2 Wheat. 227.

GUILTY. The state or condition of a person who has committed a crime, misdemeanor, or offence.

This word implies a malicious intent, and must be applied to something universally allowed to be a crime; Cowp. 275.

In Pleading. A plea by which a defendant who is charged with a crime, misdemeanor, or tort admits or confesses it. In criminal proceedings, when the accused is arraigned, the clerk asks him, "How say you, A. B., are you guilty or not guilty?" His answer, which is given *ore tenus*, is called his plea; and when he admits the charge in the indictment, he answers or pleads *guilty*; otherwise, *not guilty*.

GULE OF AUGUST. The first of August, being the day of *St. Peter ad Vincula*; T. L.

GWABR MERCHED. Maid's fee. A British word signifying a customary fine payable to lords of some manors on marriage of tenant's daughter, or otherwise on her incontinence. Cowel, *Marchet.*

GWALSTOW. A place of execution; Cowel.

GYLTWITE OR GUILTWIT (Sax.). Compensation for fraud or trespass. Grant of King Edgar, anno 964; Cowel.