H.

HABEAS CORPORA (Lat. that you have the bodies). **In English Practice.** A writ issued out of the common pleas, commanding the sheriff to compel the appearance of a jury in a cause between the parties. It answered the same purpose as a *distringas juratores* in the king's bench. It is abolished by the Common-law Procedure Act.

HABEAS CORPUS (Lat. that you have the body). A writ directed to the person detaining another, and commanding him to produce the body of the prisoner at a certain time and place, with the day and cause of his caption and detention, to do, submit to, and receive whatsoever the court or judge awarding the writ shall consider in that behalf.

This is the most famous writ in the law; and, having for many centuries been employed to remove illegal restraint upon personal liberty, no matter by what power imposed, it is often called the great writ of liberty. It takes its name from the characteristic words it contained when the process and records of the English courts were written in Latin:

Præcipimus tibi quod CORPUS *A B in custodia vestra detentum, ut dicitur, una cum causa captionis et detentionis suæ, quocunque nomine idem A B censeatur in eadem* HABEAS *coram nobis apud Westm. &c.* ad subjiciendum et recipiendum *ea, quæ curia nostra de eo ad tunc et ibidem ordinari contigerit in hac parte, etc.*

There were several other writs which contained the words *habeas corpus;* but they were distinguished from this and from one another by the specific terms declaring the object of the writ, which terms are still retained in the nomenclature of writs: as, *habeas corpus ad respondendum, ad testificandum, ad satisfaciendum, ad prosequendum*, and *ad faciendum et recipiendum, ad deliberandum et recipiendum.*

This writ was in like manner designated as habeas corpus *ad subjiciendum et recipiendum;* but, having acquired in public esteem a marked importance by reason of the nobler uses to which it has been devoted, it has so far appropriated the generic term to itself that it is now, by way of eminence, commonly called The Writ of Habeas Corpus.

The date of its origin cannot now be ascertained. Traces of its existence are found in the Year Book 48 Ed. III. 22; and it appears to have been familiar to, and well understood by, the judges in the reign of Henry VI. In its early history it appears to have been used as a means of relief from private restraint. The earliest precedents where it was used *against the crown* are in the reign of Henry VII. Afterwards the use of it became more frequent, and in the time of Charles I. it was held an admitted constitutional remedy; Hurd, Hab. Corp. 145.

In process of time, abuses crept into the practice, which in some measure impaired the usefulness of the writ. The party imprisoning was at liberty to delay his obedience to the first writ, and might wait till a second and third were issued before he produced the party; and many other vexatious shifts were practised to detain state prisoners in custody; 3 Bla. Com. 135.

Greater promptitude in its execution was required to render the writ efficacious. The subject was accordingly brought forward in parliament in 1668, and renewed from time to time until 1679, when the celebrated Habeas Corpus Act of 31 Car. II. was passed. The passage of this act has been made the theme of the highest praise and congratulation by British authors, and is even said to have "extinguished all the resources of oppression." Hurd, Hab. Corp. 93.

This act being limited to cases of commitments for "criminal or supposed criminal matters," every other species of restraint of personal liberty was left to the ordinary remedy at common law; but, doubts being entertained as to the extent of the jurisdiction of the judge to inquire into the truth of the return to the writ in such cases, an attempt was made, in 1757, in the house of lords, to render the jurisdiction more remedial. It was opposed by Lord Mansfield as unnecessary, and failed, for the time, of success. It was subsequently renewed, however; and the act of 56 Geo. III. c. 100 supplies, in England, all the needed legislation in cases not embraced by the act of 31 Car. II. Hurd, Hab. Corp.

The English colonists in America regarded the privilege of the writ as one of the "dearest birthrights of Britons;" and sufficient indications exist that it was frequently resorted to. The denial of it in Massachusetts by Judge Dudley in 1689 to Rev. John Wise, imprisoned for resisting the collection of an oppressive and illegal tax, was made the subject of a civil action against the judge, and was, moreover, denounced, as one of the grievances of the people, in a pamphlet published in 1689 on the authority of "the gentlemen, merchants, and inhabitants of Boston and the country adjacent." In New York in 1707 it served to effect the release of the Presbyterian ministers Makemie and Hampton from an illegal warrant of arrest issued by the governor, Cornbury, for preaching the gospel without license. In New Jersey in 1710 the assembly denounced one of the judges for refusing the writ to Thomas Gordon, which, they said, was the "undoubted right and great privilege of the subject." In South Carolina in 1692 the assembly adopted the act of 31 Car. II. This act was extended to Virginia by Queen Anne early in her reign, while in the assembly of Maryland in 1725 the benefit of its provisions was claimed, independent of royal favor, as the "birthright of the inhabitants." The refusal of parliament in 1774 to extend the law of habeas corpus to Canada was denounced by the continental congress in September of that year as oppressive, and was subsequently recounted in the Declaration of Independence as one of the manifestations on the part of the British government of tyranny over the colonies. Hurd, Hab. Corp. 109-120.

It is provided in art. i. sec. 9, § 2 of the constitution of the United States that "The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it."

Similar provisions are found in the constitutions of most of the states. In Virginia, Vermont, Louisiana, and North Carolina, however, it is forbidden to suspend the privilege of the writ in any case; but in the constitution of Maryland, the writ is not mentioned. In Massachusetts the suspension cannot exceed twelve months, and in New Hampshire, three months. In Florida the governor is authorized to suspend the writ in case of insurrection or rebellion.

In 1861, C. J. Taney decided in U. S. circuit

court of Maryland, that congress alone possessed the power under the constitution to suspend the writ; 9 Am. L. Reg. 524; this view was also taken by other courts; 16 Wisc. 360; 44 Barb. 98; 21 Ind. 370; *contra*, 5 Blatchf. 63. Congress, by act of March 3, 1863, 12 Stat. at L. 755, authorized the president to suspend the privilege of the writ throughout the whole or any part of the United States, whenever in his judgment the public safety might require it, during the rebellion. Under the provisions of this act, a partial suspension took place, but it was held that the suspension of the privilege of the writ does not suspend the writ itself. The writ issues as a matter of course; and on the return made to it the court decides whether the party applying is denied the right of proceeding any farther with it; 4 Wall. 115. Nor does the suspension of the writ legalize a wrongful arrest and imprisonment; it deprives the person thus arrested of the means of procuring his liberty, but does not exempt the person making the illegal arrest from liability for damages, nor from criminal prosecution; 21 Ind. 472; *contra*, 1 Pacific L. Mag. 360.

The power has never been exercised by the legislature of any of the states, except that of Massachusetts, which, on the occasion of "Shay's Rebellion," suspended the privilege of the writ from November, 1786, to July, 1787. And in the Confederate States, the privilege was suspended during the civil war; 2 Winston, 143; 27 Tex. 705.

Congress has prescribed the jurisdiction of the federal courts under the writ; but, never having particularly prescribed the mode of procedure for them, they have substantially followed in that respect the rules of the common law.

In most of the states statutes have been passed, not only providing what courts or officers may issue the writ, but, to a considerable extent, regulating the practice under it; yet in all of them the proceeding retains its old distinctive feature and merit,—that of a summary appeal for immediate deliverance from illegal imprisonment.

Jurisdiction of state courts. The states, being in all respects, except as to the powers delegated in the federal constitution, sovereign political communities, are unlimited, as to their judicial power, except by that instrument; and they, accordingly, at will, create, apportion, and limit the jurisdiction of their respective courts over the writ of *habeas corpus*, as well as other legal process, subject only to such constitutional restriction.

The restrictions in the federal constitution on this subject are necessarily implied from the express grants of judicial power therein to the federal courts in certain cases specified in art. iii. sec. 2, and in which the decision of the supreme court of the United States is paramount over that of all other courts and conclusive upon the parties.

Jurisdiction of the federal courts. This is prescribed by several acts of congress. By the 14th sec. of the Judiciary Act of September 24, 1789, 1 Stat. at L. 81, it is provided that the supreme, circuit, and district courts may issue writs of scire facias, habeas corpus, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions and agreeable to the principles and usages of law; and that either of the justices of the supreme court, as well as judges of the district courts, may grant writs of *habeas corpus* for the purpose of inquiring into the cause of commitment; "provided, that writs of *habeas corpus* shall in no case extend to prisoners in gaol, unless they are in custody under or by color of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify."

By the seventh section of the "Act further to provide for the collection of duties or imposts," passed March 2, 1833, 4 Stat. at L. 634, the jurisdiction of the justices of the supreme court and judges of the district courts is extended to "all cases of a prisoner or prisoners in jail or confinement, where he or they shall be committed or confined on or by any authority or law for any act done or omitted to be done, in pursuance of a law of the United States, or any order, process, or decree of any judge or court thereof."

By the "Act to provide further remedial justice in the courts of the United States," passed August 29, 1842, 5 Stat. at L. 539, the jurisdiction of the justices and judges aforesaid is further extended "to all cases of any prisoner or prisoners in jail or confinement, when he, she, or they, being subjects or citizens of a foreign state, and domiciled therein, shall be committed or confined or in custody under or by any authority or law, or process founded thereon, of the United States, or of any of them, for or on account of any act done or omitted under any alleged right, title, or authority, privilege, protection, or exemption set up or claimed under the commission or order or sanction of any foreign state or sovereignty, the validity and effect whereof depend upon the law of nations, or under color thereof."

By the third section of the "Act for the government and regulation of seamen in the merchant service," passed July 20, 1790, 1 Stat. at L. 131, it is provided that refractory seamen in certain cases shall not be discharged on *habeas corpus* or otherwise.

By an act approved February 6, 1867, it is provided that when, in any suit begun in a state court and removed to the circuit court of the United States, the defendant is in actual custody under state process, the clerk of the circuit court shall issue a writ of *habeas corpus cum causa* to the marshal to take the prisoner into custody to be dealt with in said circuit court according to its rules of law and order; R. S. § 642.

The supreme court issues the writ by virtue of its appellate jurisdiction; 4 Cra. 75; and it will not grant it at the instance of the subject of a foreign government to obtain the custody of a minor child detained by a citizen of one of the states; for that would be the exercise of original jurisdiction; 2 How. 65.

It will grant it on the application of one committed for trial in the circuit court on a criminal charge; 4 Cra. 75; 3 Dall. 17; and where the petitioner is committed on an in-

sufficient warrant; 3 Cra. 448; and where he is detained by the marshal on a *capias ad satisfaciendum* after the return-day of the writ; 7 Pet. 568.

None of the courts of the United States have authority to grant the writ for the purpose of inquiring into the cause of commitment, where the prisoner is imprisoned under process issued from the state courts, excepting where he is denied or cannot enforce in the judicial tribunals of the state any right secured to him by any law providing for the equal civil rights of citizens of the United States; R. S. 641; 2 Woods, 342. It was refused by the supreme court where the party for whose benefit the application was made had been convicted in a state court of levying war against the state; 3 How. 103.

It was refused by the circuit court where the petitioner, a secretary attached to the Spanish legation, was confined under criminal process issued under the authority of the state of Pennsylvania; 1 Wash. C. C. 232; also where the petitioner, a British seaman, was arrested under the authority of an act of the legislature of the state of South Carolina, which was held to conflict with the constitution of the United States; 2 Wheel. Cr. Cas. 56.

It will be granted, however, where the imprisonment, although by a state officer, is under or by color of the authority of the United States, as where the prisoner was arrested under a governor's warrant as a fugitive from justice of another state, requisition having been regularly made; 3 McLean, 121.

The power of the federal courts to issue the writ is confined to cases in which the prisoner is in custody under or by order of the authority of the United States, or is committed for trial before some court thereof, or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or is in custody in violation of the constitution, or of a law, or treaty of the United States, or being a subject or citizen of a foreign state, and domiciled therein, is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations; or unless it is necessary to bring the prisoner into court to testify; R. S. 753.

Proper use of the writ. The true use of the writ is to cause a legal inquiry into the cause of imprisonment, and to procure the release of the prisoner where that is found to be illegal.

If the imprisonment be claimed by virtue of legal process, the validity and present force of such process are the only subjects of investigation; 5 Hill, 164; 4 Barb. 31; 4 Harr. Del. 575.

But such process cannot, in this proceeding, be invalidated by errors which only render it irregular. The defects, to entitle the prisoner to be discharged, must be such as to render the process void; for the writ of *habeas corpus* is not, and cannot perform the office of, a writ of error; 3 Vt. 114; 6 *id.* 509; 4 Day, 436; 3 Hawks, 25; 2 La. 422, 587; 8 *id.* 185; 2 Park. Cr. Cas. 650; 1 Hill, N. Y. 154; 1 Abb. Pr. Cas. 210; 11 How. Pr. 418; 4 C. & P. 415; 7 Ohio St. 81.

It cannot be used to oust another competent and acting jurisdiction, or to divert or defeat the course of justice therein; 5 Ark. 424; 1 Ill. 198; 1 Md. Ch. Dec. 351; 2 *id.* 42; 19 Ala. N. S. 438; 2 Wheat. 532; 3 Yerg. 167; 1 Edw. Ch. 551; 1 Harr. Del. 392; 2 Aik. 381; 6 Miss. 80; 1 Curt. 178; 2 Green, N. J. 312; 4 M'Cord, 233; 1 Watts, 66; 6 McLean, C. C. 355; 7 Cush. 285; 8 Ohio St. 599; 21 How. 506.

The writ is also employed to recover the custody of a person where the applicant has a legal right thereto: as, the husband for his wife, the parent for his child, the guardian for his ward, and the master for his apprentice. But in such cases, as the just object of the proceeding is rather to remove illegal restraint than to enforce specifically the claims of private custody, the alleged prisoner, if an adult of sound mind, is generally permitted to go at large; if an infant of sufficient age and discretion, it is usually permitted to elect in whose custody it will remain, provided that it does not elect an injurious or improper custody; and if of tender years, without such discretion, the court determines its custody according to what the true interests and welfare of the child may at the time require; Hurd, Hab. Corp. 450-451.

Application for the writ. This may be made by the prisoner, or by any one on his behalf, where for any reason he is unable to make it.

It is usually made by petition in writing, verified by affidavit, stating that the petitioner is unlawfully detained, etc., and, where the imprisonment is under legal process, a copy thereof, if attainable, should be presented with the petition; for where the prisoner is under sentence on conviction for crime, or in execution on civil process, or committed for treason or felony plainly expressed in the warrant, he is not, in most of the states, entitled to the writ; Hurd, Hab. Corp. 209-228.

The return. The person to whom the writ is directed is required to produce the body of the prisoner forthwith before the court or officer therein named, and to show the cause of the caption and detention; 5 Term, 89; 2 South. 545.

If the writ be returned without the body, the return must show that the prisoner is not in the possession, custody, or power of the party making the return, or that the prisoner cannot, without serious danger to his life, be produced; and any evasion on this point will be dealt with summarily by attachment; 5 Term, 89; 10 Johns. 328; 1 Dudl. 46; 5 Cra. C. C. 622.

Where the detention is claimed under legal process, a copy of it is attached to the return.

Where the detention is under a claim of private custody, all the facts relied on to justify the restraint are set forth in the return.

The hearing. The questions arising upon the return or otherwise in the proceeding, whether of fact or of law, are determined by the court or judge, and not by a jury; Hurd, Hab. Corp. 299.

The evidence on the hearing is such as is allowed in other summary proceedings in which the strictness exacted on the trial in civil actions or criminal prosecutions is somewhat relaxed, the practice sometimes permitting affidavits to be read where there has been no opportunity for cross-examination; but the introduction of such evidence rests in the sound discretion of the court; Coxe, 403; Sandf. 701; 20 How. S. Tr. 1376; 1 Burr's Trial, 97. The court is not concluded by the finding of a committing magistrate, but may go behind his order of commitment, and by certiorari look into the evidence before him; 5 Blatchf. 303; 32 Penn. 520.

Pending the hearing the court may commit the prisoner for safe keeping from day to day, until the decision of the case; 14 How. 134; Bacon, Abr. *Habeas Corpus* (B 13); 5 Mod. 22.

If the imprisonment be illegal, it is the duty of the court to discharge the prisoner from that imprisonment; but if the court or officer hearing the *habeas corpus* be invested with the powers of an examining and committing magistrate in the particular case, and the evidence taken before the court, or regularly certified to it in the habeas corpus proceeding, so far implicate the prisoner in the commission of crime as to justify his being held for trial, it is usual for the court, in default of bail, to commit him as upon an original examination; 3 East, 157; 2 Pars. Eq. Cas. 317; 16 Penn. 575; 2 Cra. C. C. 612; 5 Cow. 12.

If the prisoner is not discharged or committed *de novo*, he must be remanded, or, in a proper case, let to bail; and all offences prior to the conviction of the offender are bailable, except "capital offences when the proof is evident or presumption great." Hurd, Hab. Corp. 430–449.

Recommitment after discharge. The act of 31 Car. II. prohibited, under the penalty of five hundred pounds, the reimprisoning for the same offence of any person set at large on habeas corpus, except by the legal order and process of such court wherein such prisoner was bound by recognizance to appear, or other court having jurisdiction of the cause. Somewhat similar provisions are found in the statutes of many of the states. But these provisions are not held to prevent the subsequent arrest of the prisoner on other and more perfect process, although relating to the same criminal act; 9 Pet. 704; 2 Miss. 163.

HABEAS CORPUS CUM CAUSA. See HABEAS CORPUS AD FACIENDUM ET RECIPIENDUM.

HABEAS CORPUS AD DELIBERANDUM ET RECIPIENDUM (Lat.). A writ which is issued to remove, for trial, a person confined in one county to the county or place where the offence of which he is accused was committed. Bacon, Abr. *Habeas Corpus*, A; 1 Chitty, Cr. Law, 132. Thus, it has been granted to remove a person in custody for contempt to take his trial for perjury in another county; 1 Tyrwh. 185.

HABEAS CORPUS AD FACIENDUM ET RECIPIENDUM (Lat.). A writ usually issued in civil cases to remove an action from an inferior court, where the defendant is sued and imprisoned, to some superior court which has jurisdiction over the matter, in order that the cause may be determined there. This writ is commonly called *habeas corpus cum causâ*, because it commands the judges of the inferior court to return the day and cause of the caption and detainer of the prisoner; Bacon, Abr. *Habeas Corpus*, A; 3 Bla. Com. 130; Tidd, Pr. 296.

This writ may also be issued at the instance of the bail of the defendant, to bring him up to be surrendered in their discharge, whether he is in custody on a civil suit or on a criminal accusation; Tidd, Pr. 298; 1 Chitty, Cr. Law, 132.

HABEAS CORPUS AD PROSEQUENDUM (Lat.). A writ which issues when it is necessary to remove a prisoner in order to *prosecute* in the proper jurisdiction wherein the fact was committed. 3 Bla. Com. 130.

HABEAS CORPUS AD RESPONDENUM (Lat.). A writ which is usually employed in civil cases to remove a person out of the custody of one court into that of another, in order that he may be sued and answer the action in the latter. 2 Sell. Pr. 259; 2 Mod. 198; 3 Bla. Com. 129; Tidd, Pr. 300.

This writ lies also to bring up a person in confinement to answer a criminal charge: thus, the court issued it to the warden of the fleet, to take the body of the prisoner confined there before a magistrate, to be examined respecting a change of felony or misdemeanor; 5 B. & Ald. 730.

But it was refused to bring up the body of a prisoner under sentence for a felony, for the purpose of having him tried for a previous felony.

HABEAS CORPUS AD SATISFACIENDUM (Lat.). A writ which is issued to bring a prisoner from the prison of one court into that of another, in order to charge him in execution upon a judgment of the last court. 2 Sell. Pr. 261; 3 Bla. Com. 130; Tidd, Pr. 301.

HABEAS CORPUS AD SUBJICIENDUM. See HABEAS CORPUS.

HABEAS CORPUS AD TESTIFICANDUM (Lat.). A writ which lies to bring up a prisoner detained in any jail or

prison, to give evidence before any court of competent jurisdiction. Tidd, Pr. 739; 3 Bla. Com. 130; 20 Iowa, 372.

The allowance of this writ resting in the discretion of the court, it will be refused if the application appear to be in bad faith or a *mere contrivance;* 3 Burr. 1440.

It was refused to bring up a prisoner of war; 2 Dougl. 419; or a prisoner in custody for high treason; Peake, Add. Cas. 21.

It would of course be refused where it appear from the application that the prisoner was under sentence for crime which rendered him incompetent as a witness.

The application for the writ is made upon affidavit, stating the nature of the suit and the materiality of the testimony, together with the general circumstances of restraint which render the writ necessary; Cowp. 672; 2 Cow. & H. Notes to Phill. Ev. 658.

HABEAS CORPUS ACTS. See HABEAS CORPUS. The present act for the United States judiciary will be found in Rev. Stat. tit. xiii. ch. 13.

HABENDUM (Lat. for having).

In Conveyancing. The clause usually following the granting part of the premises of a deed, which defines the extent of the ownership in the thing granted to be held and enjoyed by the grantee. 3 Washb. R. P. 436.

It commences with the words "to have and to hold," "habendum et tenendum." It is not an essential part of a deed, but serves to qualify, define, or control it; Co. Litt. 6 *a*, 299; 4 Kent, 468; 8 Mass. 162, 174; and may be rejected if clearly repugnant to the rest of the deed; Shepp. Touchst. 102; Skinn. 543. See, generally, 3 Washb. R. P. 436 *et seq.;* 4 Kent, 468; 4 Greenl. Cruise, Dig. 273; 5 S. & R. 375; 8 Mass. 162; 7 Me. 455; 6 Conn. 289.

HABENTES HOMINES (Lat.). Rich men; Du Cange.

HABERE FACIAS POSSESSIONEM (Lat.). **In Practice.** A writ of execution in the action of ejectment; originally to recover possession of a chattel interest in real estate.

The sheriff is commanded by this writ that, without delay, he cause the plaintiff to have possession of the land in dispute which is therein described: a *fi. fa.* or *ca. sa.* for costs may be included in the writ. The duty of the sheriff in the execution and return of that part of the writ is the same as on a common *fi. fa.* or *ca. sa.* The sheriff is to execute this writ by delivering a full and actual possession of the premises to the plaintiff. For this purpose, he may break an outer or inner door of the house; and, should he be violently opposed, he may raise the *posse comitatus;* 5 Co. 91 *b*; 1 Leon. 145.

The name of this writ is abbreviated *hab. fa. poss.* See 10 Viner, Abr. 14; Tidd, Pr. 1081; 2 Arch. Pr. 58; 3 Bla. Com. 412.

HABERE FACIAS SEISINAM (Lat.). **In Practice.** The name of a writ of execution, used in most real actions, by which the sheriff is directed that he cause the demandant to have seisin of the lands which he has recovered. 3 Bouvier, Inst. n. 3374. It lay to recover possession of the freehold, while to recover a chattel interest in real estate the *habere facias possessionem* was the appropriate writ. It was practically abolished in England by the Common Law Procedure Acts of 1852 and 1860, but is still known in some of the states in connection with the action of dower; Bright. Purd. §§ 1802, 1809.

This writ may be taken out at any time within a year and a day after judgment. It is to be executed nearly in the same manner as the writ of *habere facias possessionem*, and for this purpose the officer may break open the outer door of a house to deliver seisin to the demandant; 5 Co. 91 *b*; Comyns, Dig. *Execution*, E; Wats. Sher. 238. The name of this writ is abbreviated *hab. fac. seis.* See Bingh. Ex. 115, 252; Bacon, Abr.

HABERE FACIAS VISUM (Lat.). **In Practice.** The name of a writ which lay when a view is to be taken of lands and tenements. Fitzh. N. B. Index, *View*.

HABILIS (Lat.). Fit; suitable; 1 Sharsw. Bla. Com. 436. Active; useful (of a servant). Du Cange. Proved; authentic (of Book of Saints). Du Cange. Fixed; stable (of authority of the king). Du Cange.

HABIT. A disposition or condition of the body or mind acquired by custom or a frequent repetition of the same act. See 2 Mart. La. N. S. 622; 18 Penn. 172; 5 Gray, 851.

The *habit of dealing* has always an important bearing upon the construction of commercial contracts. A ratification will be inferred from the *mere habit of dealing* between the parties: as, if a broker has been accustomed to settle losses on policies in a particular manner, without any objection being made, or with the silent approbation of his principal, and he should afterwards settle other policies in the same manner, to which no objection should be made within a reasonable time, a just presumption would arise of an implied ratification: for, if the principal did not agree to such settlement, he should have declared his dissent; 2 Bouvier, Inst. 1313, 1314. See USAGE.

HABIT AND REPUTE. Applied in Scotch law to a general understanding and belief of something's having happened: *e. g.* marriage may be constituted by *habit and repute*; Bell, Dict.

HABITANCY. See INHABITANT.

HABITATION. In Civil Law. The right of a person to live in the house of another without prejudice to the property.

It differed from a usufruct in this, that the usufructuary might apply the house to any purpose,—as of a store or manufactory; whereas the party having the right of habitation could only use it for the residence of himself and family. 1 Brown, Civ. Law, 184; Domat, l. 1, t. 11, s. 2, n. 7.

In Estate. A dwelling-house; a home stall. 2 Bla. Com. 4; 4 *id.* 220.

HABITUAL CRIMINALS ACT. The stat. 32 & 33 Vict. c. 99. Its object was to give the police greater control over convicted

criminals at large, and to provide for the registration of criminals. Now repealed and other provisions substituted for it, by the Prevention of Crime Act, 34 & 35 Vict. c. 112. Moz. & W.

HABITUAL DRUNKARD. A person given to ebriety or the excessive use of intoxicating drink, who has lost the power or the will, by frequent indulgence, to control his appetite for it. 18 Penn. 172; 5 Gray, 85. One who has the habit of indulging in intoxicating drinks so firmly fixed that he becomes drunk whenever the temptation is presented by his being near where liquor is sold. 35 Mich. 210. If there is a fixed habit of drinking to excess, so as to disqualify a person from attending to his business during the principal portion of the time usually devoted to business, it is habitual intemperance. 19 Cal. 267. Habitual drunkenness of a husband does not entitle the wife to a divorce; L. R. 1 P. & M. 46; *contra*, Alb. L. J. 66.

By the laws of some states, such persons are classed with idiots, lunatics, etc., in regard to the care of property; and in some, they are liable to punishment. See 8 N. Y. 388; Crabbe, 558. See Rogers, Drinks, etc.; DRUNKENNESS; DELIRIUM TREMENS; INTOXICATION.

HACIENDA. In Spanish Law. A generic term, applicable to the mass of the property belonging to a state, and the administration of the same. Also a private estate or plantation.

As a science, it is defined by Dr. Jose Canga Argüells, in his "Diccionario de Hacienda," to be that part of civil economy which teaches how to aggrandize a nation by the useful employment of its wealth.

A royal estate. Newman & B. Dict.

HACKNEY CARRIAGES. Carriages plying for hire in the street. The driver is liable for negligently losing baggage; 2 C. 13. 877; 33 How. Pr. 481. They are usually regulated in large cities by statute or ordinance; 17 & 18 Vict. c. 86; 122 Mass. 60

HADBOTE. In English Law. A recompense or amends made for violence offered to a person in holy orders.

HADD. A boundary or limit. A statutory punishment defined by law, and not arbitrary; Moz. & W.

HÆREDA. The hundred court (*q. v.*).

HÆREDE ABDUCTO. HÆREDE DELIBERANDO ALII QUI HABET CUSTODIAN TERRÆ. Ancient writs that lay for the restoration to his lawful guardian of an heir under age, who had been conveyed away by some other person. Cowel.

HÆREDES EXTRANEI (Lat.). **In Civil Law.** Extraneous or foreign heirs; that is, those who were not children or slaves of the testator. Those only could be extraneous heirs who had a capacity of accepting the inheritance both at the time of making the will and at the death of the testator. Hallifax, Anal. b. 11, c. 6, § 38 *et seq.*

HÆREDES NECESSARII (Lat.). **In Civil Law.** Necessary heirs. If slaves were made heirs, they had no choice, but on the death of the testator were *necessarily* free and his heirs. Calvinus, Lex.; Hallifax, Anal. b. 11, c. 6, § 38 *et seq.*

HÆREDES PROXIMI (Lat.). The children or decendants of the deceased. Dalrymple, Feud. 110.

HÆREDES REMOTIORES (Lat.). The kinsmen other than children or decendants. Dalrymple, Feud. 110.

HÆREDES SUI ET NECESSARII (Lat.). **In Civil Law.** Proper and necessary heirs; heirs by relationship and necessity. The descendants of an ancestor in direct line were so called, *sui* denoting the relationship, and *necessarii* the necessity of law which made them heirs without their election, and whether the ancestor died testate or intestate. Hallifax, Anal. b. 11, c. 6, § 38 *et seq.;* Mack. C. L. §§ 681, 682.

HÆREDIPETA (Law Lat.). **In Old English Law.** The next heir to lands. Laws of Hen. I.; Du Cange. And who seeks to be made heir (*qui cupit hœreditatem*). Concil. Compostel. anno 1114, can. 18, inter Hispan. t. 3, p. 324; Du Cange.

HÆREDITAS (Lat. from *hœres*). **In Civil Law.** "*Nihil aliud est hœreditas, quam successio in universum jus, quod defunctus habuit.*" *Inheritance* is nothing else than succession to every right which the deceased possessed. Dig. 50. 17; 50. 16; 5. 2; Mack. C. L. § 605; Bracton, 62 *b*.

In Old English Law. An estate transmissible by descent; an inheritance. Marten, Anecd. Collect. t. 3, p. 269; Co. Litt. 9.

HÆREDITAS JACENS (Lat.). **In Civil Law.** A prostrate inheritance. The inheritance left to a voluntary heir was so called as long as he had not manifested, either expressly or by silence, his acceptance or refusal of the inheritance, which, by a fiction of law, was said to sustain the person (*sustinere personam*) of the deceased, and not of the heir. Mack. C. L. § 685 *a*. An estate with no heir or legatee to take. Code, 10. 10., 1.

In English Law. An estate in abeyance; that is, after the ancestor's death and before assumption of heir. Co. Litt. 342 *b*. An inheritance without legal owner, and therefore open to the first occupant. 2 Bla. Com. 259.

HÆRES. In Roman Law. One who succeeds to the rights and occupies the place of a deceased person, being appointed by the will of the decedent. It is to be observed that the Roman *hœres* had not the slightest resemblance to the English *heir*. He corresponded in character and duties almost exactly with the *executor* under the English law. The institution of the *hœres* was the essential characteristic of a *testament:* if this

was not done, the instrument was called a *codicillus*. Mack. C. L. §§ 632, 650.

Who might not be instituted. Certain persons were not permitted to be instituted in this capacity: such as, persons not Roman citizens, slaves of such persons, persons not in being at the death of the testator, and corporations, unless especially privileged. Also, the emperor could not be made *hæres* with the condition that he should prosecute a suit of the testator against a subject. Nor could a second husband or wife be instituted *hæres* to a greater portion of the estate than was left to that child of the first marriage which received least by the will. So, a widow who married before the expiration of her year of mourning could not institute her second husband as *hæres* to more than a third of her estate. And a man who had legitimate children could not institute as *hæredes* a concubine and her children to more than a twelfth of his estate, nor the mother alone to more than one-twenty-fourth. Mack. C. L. § 651.

The institution of the *hæres* might be *absolute* or *conditional*. But the condition, to be valid, must be *suspensive* (condition precedent, see CONDITION), *possible*, and *lawful*. If, however, this rule was infringed, certain conditions, as the *resolutive* (condition subsequent, see CONDITION), the *impossible*, and the *immoral* or *indecent*, were held nugatory, while others invalidated the appointment of the *hæres*,—as the *preposterous* and *captatory*, *i. e.* the appointment of a *hæres* on condition that the appointee should, in turn, institute the testator or some other person *hæres* in his testament. In regard to limitations of time, they must, to be valid, commence *ex die incerto*. A condition that A should become *hæres* after a *certain* day, or that he should be *hæres* up to a day whether *certain* or *uncertain*, was nugatory. The testator might assign his reasons for the institution of a particular *hæres*, but a mistake in the facts upon which those reasons were based did not, in general, affect the validity of the appointment. The institution might be accompanied with a direction that the *hæres* should apply the inheritance either wholly or in part to a specified purpose, which he was bound to comply with in case he accepted the inheritance, unless it was physically impossible to do so, or unless the *hæres* himself was the only person affected by such directions. The *hæres* might be instituted either *simply*, without any interest in the estate, or with a fixed share therein, or with regard to some particular thing; Mack. C. L. § 653. It was customary, in order to provide against a failure to accept on the part of the direct *hæres*, to substitute one or more *hæredes* to him. This substitution might be made in various forms; but the result was the same in all,—that if the first of the direct *hæredes* failed to accept the inheritance, whether from indisposition, permanent incapacity, or from dying before the testator, the substitute stood in his stead. There might be several degrees of substitutes, each ready to act in case of the failure of all the preceding; and the rule was *substitutus substituto est substitutus instituto:* which meant that on a failure of all the intermediate substitutes, the lowest in rank succeeded to the position of the instituted *hæres*. This was called *substitutio vulgaris*. There was another, the *substitutio pupillaris*, which was nothing more than the appointment, by the testator, of a *hæres* to a minor child under his authority,—which appointment was good in case the child died after the testator, and still a minor. It was, in fact, making a testament for such minor—an act which he could not perform for himself. Mack. C. L. §§ 668, 669.

Persons entitled to the inheritance. Though, generally speaking, the testator might institute as *hæres* any person whatever not within the exceptions above mentioned, yet his relatives, within certain limits, were considered as peculiarly entitled to the office, and if he instituted any one else they could not be entirely excluded, but were admitted to a share of the inheritance, which share, called *portio legitima*, or *pars legitima*, was fixed by law. The rules in regard to the persons entitled to this share of the estate, and its amount, are very intricate, and too voluminous to be introduced here. They may be found in Mackeldey, §§ 654–657. Among those entitled to the *pars legitima*, the immediate ascendants and descendants of the testator were peculiary distinguished in this, that they must be mentioned in the testament, either by being formally instituted as *hæredes*, or by being formally excluded, while the other relatives so entitled might receive their shares as a legacy, or in any other way, without being formally instituted. From this necessity of mentioning this class of relatives, they were called *successores necessarii*.

Acquisition of the inheritance. Except in the case of a slave of the testator (*hæres necessarius*), or a person under his authority (*potestas*) at his death (*hæres suus et necessarius*), the institution of a person as *hæres* did not oblige him to accept the office. A formal acceptance was requisite in the case of all other persons than the two classes just mentioned, whence such persons were called *hæredes voluntarii*, and in opposition to the *sui hæredes*, *extranei hæredes*. This acceptance might be *express* (*aditio hæreditatis*), or *tacit*, *i. e.* by performing some act in relation to the inheritance which admitted of no other construction than that the person named as *hæres* intended to accept the office. The refusal of the office, if express, was called *repudiatio;* if tacit, through the neglect of the *hæres* to make use of his rights within a suitable period, it was called *omissio hæreditatis*. The acceptance could not be coupled with a condition; and a refusal was final and irrevocable. Mack. C. L. §§ 681–683.

Rights and liabilities of the hæres. The fundamental idea of the office is that as regards the estate the *hæres* and the testator form but a single person. Hence it follows that the private estate of the *hæres* and the

estate of the testator are united (*confusio bonorum defuncti et hæredis*); the *hæres* acquires all rights of property, and becomes liable to all demands, except those purely personal, to which the testator was entitled and subject, and is, consequently, responsible for all the debts of the deceased, even if the estate left by the latter is not sufficient to pay them. He must, moreover, recognize as binding upon him all acts of the testator relating to the estate. He is bound to obey the directions of the will, especially to perform the trusts and pay the legacies imposed upon him, yet this only so far as the residue of the estate, after liquidating the debts, enables him to do so.

These were the strict rules of the law; but two modes, the *spatium deliberandi* and the *beneficium inventarii*, were in course of time contrived for relieving the *hæres* from the risk of loss by an acceptance of the office.

The *spatium deliberandi* was a period of delay granted to the *hæres*, upon application to the magistrate, in order that he might investigate the condition of the estate before deciding whether to accept or reject the office. If the *hæres* was pressed by the other *hæredes*, or by the creditors of the estate, to decide whether to accept or reject the office he must decide immediately, or apply for the *spatium deliberandi*, which when allowed by the emperor continued for a year, and when by a judge for nine months, from the day of its allowance. If the *hæres* had not decided at the expiration of this period, he was held to have accepted. If he was not pressed to a decision by the other *hæredes* or by the creditors, he was allowed a year from the day he was notified of the inheritance having been conferred upon him, to deliberate whether to accept or not. If after deliberating for the alloted period, he should accept the inheritance, he became responsible for the debts of the testator, without regard to whether the estate was sufficient or not to pay them.

The *beneficium inventarii* was an extension to all *hæredes* of the privilege belonging to soldiers not to be responsible for the debts beyond the assets. This privilege to the *hæres* was conditional upon his commencing an inventory within thirty days and completing it within sixty from the time he became notified of his appointment. The inventory must be prepared in the presence of a notary, and must be signed by the *hæres*, with a declaration that it included the whole estate, etc., to which fact he might be obliged to make oath. He then became liable only to the extent of the assets. He was allowed, before paying the debts, to deduct the expenses of the funeral, of establishing the testament, and of making the inventory. He could not be forced to pay debts or legacies during the preparation of the inventory, and afterwards he paid the claimants in full in the order in which they presented themselves, and when the assets were exhausted could not be required to pay any more. His own claims against the estate might be paid first, and his debts to the estate were part of the assets. If he neglected to prepare the inventory within the legal period, he forfeited the privileges of it; which also was the case if he applied for the *spatium deliberandi;* so that he must choose between the two.

The creditors and legatees of the testator were allowed the *beneficium separationis*, by which, when the *hæres* was deeply in debt, and, by reason of the *confusio bonorum defuncti et hæredis*, they were in danger of losing their claims, they were permitted to have a separation of the assets from the private estate of the *hæres*. Application for this privilege must have been made within five years from the acceptance of the inheritance; but it would not be granted if the creditors of the testator had in any way recognized the *hæres* as their debtor. If it was granted, they were in general restricted to the assets for payment of their claims, and the private estate of the *hæres* was discharged. If the assets were not exhausted in satisfying the creditors and legatees of the testator, the creditors of *hæres* might come in upon the balance; but these latter were not entitled to the *beneficium separationis*.

The *hæres* might transmit the inheritance by will; but, in general, he could not do so till after acceptance. To this, however, there were numerous exceptions.

The *remedies of the hæres* are too intimately connected with the general system of Roman jurisprudence to be capable of a brief explanation. See Mack. C. L. §§ 692, 693; Dig. 5. 3; Cod. 3. 31; Gaius, iv. § 144, etc.; Maine, Anc. Law.

Cohæredes. When several *hæredes* have accepted a joint inheritance, each, *ipso jure*, becomes entitled to a proportional share in the assets, and liable to a proportional share of the debts, though the testator may, if he choose, direct otherwise, and they may also agree otherwise among themselves; but in both these cases the creditors are not affected, and may pursue each *hæres* to the extent of his legal share of liability, and no further.

One of the *cohæredes* has a right to compel a partition of the assets and liabilities, subject, however, to an agreement among themselves, or a direction by the testator, that the inheritance shall remain undivided for a time; Mack. C. L. §§ 694, 695.

HÆRETICO COMBURENDO. A writ for the burning of heretics; thought to be as old as the common law, but confirmed by various statutes. It was last executed in the ninth year of James I., and was abolished in 1677.

HAFNE COURTS (*hafne*, Dan. a haven, or port). Haven courts; courts anciently held in certain ports in England. Spelman, Gloss.

HALF-BLOOD. A term denoting the degree of relationship which exists between those who have one parent only in common.

By the English common law, one related to an intestate of the half-blood only could

never inherit, upon the presumption that he is not of the blood of the original purchaser; but this rule has been greatly modified by the 3 & 4 Will. IV. c. 106.

In this country, the common-law principle on this subject may be considered as not in force, though in many states some distinction is still preserved between the whole and the half-blood; 4 Kent, 403, n.; 2 Yerg. 115; 1 M'Cord, 456; 31 Penn. 289; Dane, Abr. Index; Reeves, *Descents, passim;* 2 Washb. R. P. 411. See DESCENT.

HALF-BROTHER, HALF-SISTER. Persons who have the same father, but different mothers; or the same mother, but different fathers.

HALF-CENT. A copper coin of the United States, of the value of one two-hundreth part of a dollar, or five mills, and of the weight of ninety-four grains. The first half-cents were issued in 1793, the last in 1857.

HALF-DEFENCE. See DEFENCE.

HALF-DIME. A silver coin of the United States, of the value of five cents, or the one-twentieth part of a dollar.

It weighs nineteen grains and two-tenths of a grain,—equal to four-hundredths of an ounce Troy,—and is of the fineness of nine hundred thousandths; nine hundred parts being pure silver, and one hundred parts copper. The fineness of the coin is prescribed by the 8th section of the general mint law, passed Jan. 18, 1837. 5 Stat. at L. 137. The weight of the coin is fixed by the 1st section of the act of Feb. 21, 1853. 10 Stat. at L. 160. The second section of this last-cited act directs that silver coins issued in conformity to that act shall be a legal tender in payment of debts for all sums not exceeding five dollars. This provision applies to the half-dollar and all silver coins below that denomination. The first coinage of half-dimes was in 1793. A few half "dismes," with a likeness of Mrs. Washington, the wife of the president, upon the obverse of the coin, were issued in 1792; but they were not of the regular coinage.

By act of 9 June, 1879, 21 Stat. at L. p. 7, (supplement to Rev. Stat. v. 1, p. 488), silver coin of smaller denominations than one dollar shall be a legal tender in all sums not exceeding ten dollars. The coining of the half-dime was abolished by act of 12 Feb. 1873, c. 131, s. 16. Its place was supplied by a five cent piece composed of three-fourths copper and one-fourth nickel, of the weight of seventy-seven and sixteen-hundredths grains troy. The minor coins, viz. the five, three, and one cent pieces, are a legal tender for any amount not exceeding twenty-five cents in any one payment.

HALF-DOLLAR. A silver coin of the United States, of half the value of the dollar or unit, and to contain one hundred and eighty-five grains and ten sixteenth parts of a grain of pure, or two hundred and eight grains of standard, silver. 1 Stat. at L. 348. Under this law, the fineness of the silver coins of the United States was 892.4 thousandths of pure silver.

The weight and fineness of the silver coins were somewhat changed by the act of Jan. 18, 1837, 5 Stat. at L. 137; the weight of the half-dollar being by this act fixed at two hundred and six and one-quarter grains, and the fineness at nine hundred thousandths; conforming, in respect to fineness, with the coinage of France and most other nations.

The weight of the half-dollar was reduced by the act of February 21, 1853, 10 Stat. at L. 160, to one hundred and ninety-two grains, at which rate it continues to be issued,—the standard of fineness remaining the same.

The half-dollars coined under the acts of 1792 and 1837 (as above) are a legal tender at their nominal value in payment of debts to any amount. Those coined since the passage of the act of February 21, 1853, are a legal tender in payment of debts for all sums not exceeding five dollars. Sec. 2. The silver coins struck in the year 1853, under this last-cited act, may be distinguished from the others of that year by the arrow-heads on the right and left of the date of the piece. In 1854, and subsequent years, the arrow-heads are omitted.

By the act of 12 Feb. 1873, c. 131, s. 15, the weight of the half-dollar shall be twelve and one-half grams (about 193 grains), and by act of June, 1879, supplement to Rev. Stat. v. 1, p. 488, it is a legal tender for sums not exceeding ten dollars. The same act enables the holder of any silver coins of a smaller denomination than one dollar, to exchange them in sums of twenty dollars, or any multiple thereof, at the U. S. Treasury for lawful money of the United States.

HALF-EAGLE. A gold coin of the United States, of the value of five dollars.

The weight of the piece is one hundred and twenty-nine grains of standard fineness, namely, nine hundred thousandths of pure gold, and one hundred of alloy of silver and copper: "provided that the silver do not exceed one-half of the whole alloy." Act of Jan. 18, 1837, 5 Stat. at L. 136. As the proportion of silver and copper is not fixed by law further than to prescribe that the silver therein shall not exceed fifty in every thousand parts, the proportion was made the subject of a special instruction by Mr. Snowden, former director of the mint, as follows:—

"As it is highly important to secure uniformity in our gold coinage, all deposits of native gold, or gold not previously refined, should be assayed for silver, without exception, and refined to from nine hundred and ninety to nine hundred and ninety-three, say averaging nine hundred and ninety-one as near as may be. When any of the deposits prove to be nine hundred and ninety, or finer, they should be reserved to be mixed with the refined gold. The gold coin of the mint and its branches will then be nearly thus: gold, nine hundred; silver, eight; copper, ninety-two; and thus a greater uniformity of color will be attained than was heretofore accomplished."

The instructions on this point were prescribed by the director in September, 1853. Mint Pamphlet, "Instructions relative to the Business of the Mint," 14.

The act of February 12, 1873, Rev. Stat. § 3514, fixes the proportion of silver at in no case more than one-tenth of the whole alloy.

For all sums whatever the half-eagle is a legal tender of payment of five dollars. Act of Congress above cited, sec. 10, p. 138. The first issues of this coin at the mint of the United States were in 1795.

HALF-PROOF. In Civil Law. That which is insufficient as the foundation of a sentence or decree, although in itself entitled to some credit. Vicat, *Probatio*.

HALF-SEAL. A seal used in the English chancery for the sealing of commissions to

delegates appointed upon any appeal, either in ecclesiastical or marine causes.

HALF-TONGUE. A jury half of one *tongue* or nationality and half of another. Vide *De medietate linguæ*, Jacob, Law Dict.

HALF-YEAR. In the computation of time, a half-year consists of one hundred and eighty-two days. Co. Litt. 135 *b*; N. Y. Rev. Stat. part 1, c. 19, t. 1, § 3.

HALI-GEMOTE. Halle-gemote.

HALL. A public building used either for the meetings of corporations, courts, or employed to some public uses: as, the city hall, the town hall. Formerly this word denoted the chief mansion or habitation.

HALLAZCO. In Spanish Law. The finding and taking possession of something which previously had no owner, and which thus becomes the property of the first occupant. Las Partidas, 3. 5. 28, 5. 48. 49, 5. 20. 50.

HALLE-GEMOTE. Hall assembly. A species of court baron.

HALLUCINATION. In Medical Jurisprudence. A species of mania by which an idea reproduced by the memory is associated and embodied by imagination. This state of mind is sometimes called delusion, or waking dreams.

An attempt has been made to distinguish *hallucinations* from illusions: the former are said to be dependent on the state of the intellectual organs, and the latter on that of those of sense. Ray, Med. Jur. § 99; 1 Beck, Med. Jur. 538, note. An instance is given of a temporary hallucination in the celebrated Ben Jonson, the poet. He told a friend of his that he had spent many a night in looking at his great toe, about which he had seen Turks and Tartars, Romans and Carthaginians, fight, in his imagination. 1 Collin. Lun. 34. If, instead of being temporary, this affection of his mind had been permanent, he would doubtless have been considered insane. See, on the subject of spectral illusions, Hibbert, Alderson, and Farrar's Essays; Scott on Demonology, etc.; 3 Bostock, Physiology, 91, 161; 1 Esquirol, Maladies Mentales, 159.

HALMOTE. See HALLE-GEMOTE.

HALYMOTE (*Holimot, Halegemot;* from Saxon *halg*, holy, and *gemot* or *mot*, a meeting). A holy or ecclesiastical court.

A court held in London before the lord mayor and sheriffs, for regulating the bakers.

It was anciently held on *Sunday* next before St. Thomas's day, and therefore called the *holymote*, or holy court; Cowel, edit. 1727; Cunningham, Law Dict. *Holymote.* See Spelman, Gloss.; Co. 4th Inst. 321.

HALYWERCFOLK. Those who held by the service of guarding and repairing a church or sepulchre, and were excused from feudal services; Hist. Dunelm. apud Whartoni Ang. Sax. pt. 1, p. 749. Especially in the county of Durham, those who held by service of defending the corpse of St. Cuthbert. Jacob, Law Dict.

HAMESUCKEN. In Scotch Law. The crime of hamesucken consists in "the felonious seeking and invasion of a person in his dwelling-house." 1 Hume, 312; Burnett, 86; Allison, Cr. Law of Scotl. 199.

The mere breaking into a house, without personal violence, does not constitute the offence, nor does the violence without an entry with intent to commit an assault. It is the combination of both which completes the crime, and the injury to the person must be of a grievous character. The punishment of hamesucken in aggravated cases of injury is death; in cases of inferior atrocity, an arbitrary punishment; Alison, Cr. Law of Scotl. ch. 6; Erskine, Inst. 4. 9. 23.

This term was formerly used in England instead of the now modern term *burglary;* 4 Bla. Com. 223.

But in Hale's Pleas of the Crown it is said, "The common genus of offences that comes under the name of *hamsecken* is that which is usually called house-breaking; which sometimes comes under the common appellation of *burglary*, whether committed in the day or night to the intent to commit felony: so that house-breaking of this kind is of two natures." 1 Hale, Pl. Cr. 547; 22 Pick. 4.

HAMLET. A small village; a part or member of a vill. It is the diminutive of *ham*, a village; Cowel.

HAMSOCUE (from Saxon *ham*, house, *sockue*, liberty, immunity. The word is variously spelled *hamsoca, hamsocua, hamsoken, haimsuken, hamesaken*). The right of security and privacy in a man's house. Du Cange. The breach of this privilege by a forcible entry of a house is breach of the peace; Anc. Laws & Inst. of Eng. Gloss.; Du Cange; Bracton, lib. 3, tr. 2, c. 2, § 3. The right to entertain jurisdiction of the offence; Spelman; Du Cange. Immunity from punishment for such offence; *id.;* Fleta, lib. 1, c. 47, § 18. An insult offered in one's own house (*insultus factus in domo*). Brompton, p. 957; Du Cange.

HANAPER. A hamper or basket in which were kept the writs of the court of chancery relating to the business of a subject, and their returns, 5 & 6 Vict. c. 113; 10 Ric. II. c. 1; equivalent to the Roman *fiscus; id.* According to Spelman, the fees accruing on writs, etc. were there kept; Du Cange; 3 Bla. Com. 49.

HAND. A measure of length, four inches long: used in ascertaining the height of horses.

HANDBILL. A written or printed notice displayed to inform those concerned of something to be done.

HAND BOROW (from hand, and Saxon *borow*, a pledge). Nine of a decennary or friborg (*q. v.*) were so called, being inferior to the tenth or *head borow*,—a *decenna* or *friborga* being ten freemen or *frankpledges*, who were mutually sureties for each other to the king for any damage; Du Cange, ***Friborg, Head-borow.***

HANDHABEND. **In Saxon Law.** One having a thing in his hand; that is, a thief found having the stolen goods in his possession,—*latro manifestus* of the civil law. See Laws of Hen. I. c. 59; Laws of Athelstane, § 6; Fleta, lib. 1, c. 38, § 1; Britton, p. 72; Du Cange, *Handhabenda.*

Jurisdiction to try such thief. *Id.*

HANDSALE. Anciently, among all the northern nations, shaking of hands was held necessary to bind a bargain,—a custom still retained in verbal contracts: a sale thus made was called *handsale, venditio per mutuam manum complexionem.* In process of time the same word was used to signify the price or earnest which was given immediately after the shaking of hands, or instead thereof. In some parts of the country it is usual to speak of hand-money, as the part of the consideration paid or to be paid at the execution of a contract of sale. 2 Bla. Com. 448; Heineccius, *de Antiquo Jure Germanico*, lib. 2, § 335; Toullier, liv. 3, t. 3, c. 2, n. 33.

HANDWRITING. Any thing written by a person. The manner in which a person writes, including the formation of the characters, the separation of the words, and other features distinguishing the written matter, as a mechanical result, from the writing of other persons.

The handwriting of attesting witnesses after thirty years need not be proved; so also of unattested documents taken from proper depositaries; 7 East, 279; 62 Me. 414. The extrajudicial admissions of a party as to his handwriting, are evidence to prove the same, though not of a very satisfactory nature; Whart. Ev. 705.

It is said that a witness has three means of becoming acquainted with a person's handwriting: by seeing him write, by having seen his writing, and by a comparison of the writing in question with other writings shown to be genuine; Best. Evid. It is enough that the witness has seen the party write only once; 22 Gratt. 405. A servant who has taken his master's letters to the post is a competent witness to prove his handwriting; 5 Ad. & E. 740; so a witness who has carried on a correspondence with the person whose writing is in controversy, is competent; *id.* At common law, the genuineness of a contested writing could not be proved by a witness comparing such writing with other writings acknowledged to be genuine; 7 C. & P. 548; Whart. Ev. § 712; many American cases have followed this rule; 91 U. S. 270; 9 Cow. 94; 28 Penn. 318; 37 Ill. 209; 43 Ind. 381; but if a paper admitted to be in the handwriting of the person is in evidence for some other purpose in the cause, the signature in question may be compared with it by the jury; 91 U. S. 270; 75 N. Y. 288; 7 Abb. (N. Y.) N. Cas. 98. Comparison by a witness is now allowed in England and New York by statute. In other states it is the practice to admit any papers, whether relevant or not, if they can be shown to be the uncontested writings of the party whose signature is disputed; Whart. Ev. § 714; 53 N. H. 452; 108 Mass. 344. In Pennsylvania it is held that this proof is only supplementary, and the comparison is to be made by the jury; 57 Penn. 438; 43 Penn. 9. In South Carolina, papers proved or admitted to be in the handwriting of the person whose signature is in controversy are receivable, but the testimony is not entitled to any very high consideration; 5 S. C. 458. It is said to be more satisfactory to submit a genuine standard to the jury than to receive the transient impression of a witness who has seen the party write once; 10 S. & R. 112.

A party cannot himself write specimens for the instruction of witnesses; Whart. Ev. § 715; nor can he make test writings to be used for a comparison of hands; 110 Mass. 155; 128 *id.* 46.

In England, by statute, a person whose handwriting is in dispute, may be called upon by the judge to write in his presence, and such writing may be compared with the writing in question; Whart. Ev. § 706; see 4 F. & F. 490; 45 Me. 534.

It is not necessary that a witnesss should swear to his belief in the genuineness of handwriting; it is enough if he testifies to his opinion thereon; Whart. Ev. § 709; 25 Penn. 133; 38 Ill. 363. A witness has been allowed to testify merely that the writing in contest was like the writing of the party whose writing it was alleged to be; 4 Esp. 37; but see 8 Ves. 476.

On cross-examination, other writings not in the case may be shown to the witness, and he may be asked whether they are in the handwriting of the party in question; if so declared by the witness, they may be shown not to be genuine and given to the jury for comparison; Whart. Ev. § 710; see 11 Ad. & E. 322.

Experts may be permitted to testify as to whether handwriting is natural or feigned; 116 Mass. 331; 37 Miss. 461; as to the nature of the ink used; 30 N. Y. 385; whether the whole of an instrument was written by the same person, at the same time, and with the same pen and ink; 34 Penn. 365; 11 Gray, 250; whether the figures in a check have been altered; 18 Ind. 329; see 7 Abb. (N. Y.) N. Cas. 113; 32 N. J. Eq. 819; 62 Ga. 100; 61 Ala. 33; 47 Wis. 530; 39 Md. 36.

Forgeries of handwriting, and paper and ink to imitate various degrees of age, are so skilfully made, that examination and comparison, even by so-called experts, in the way heretofore usual in courts of justice, are often inadequate and misleading. A scientific use of the microscope, photography, and chemical regents, will generally prove a much surer means of discovering truth. See 27 Am. L. Reg. 273.

HANGING. Death by the halter, or the suspending of a criminal, condemned to suffer

death, by the neck, until life is extinct. A mode of capital punishment.

HANGMAN. An executioner. The name usually given to a man employed by the sheriff to put a man to death, according to law, in pursuance of a judgment of a competent court and lawful warrant.

HANGWITE (from Saxon *hangian*, to hang, and *wite*, fine). Fine, in Saxon law, for illegal hanging of a thief, or for allowing him to escape. Immunity from such fine, Du Cange.

HANSE. A commercial confederacy for the good ordering and protection of the commerce of its members. An imposition upon merchandise. Du Cange, *Hansa.*

HANSE TOWNS. A number of towns in Europe which joined in a league for mutual protection of commerce as early as the twelfth century.

Amsterdam and Bremen were the first two that formed it, and they were joined by others in Germany, Holland, England, France, Italy, and Spain, till in 1200 they numbered seventy-two. They made war and peace to protect their commerce, and held countries in sovereignty, as a united commonwealth. They had a common treasury at Lubeck, and power to call an assembly as often as they chose. For purposes of jurisdiction, they were divided into four colleges or provinces. Great privileges were granted them by Louis VI. of France and succeeding monarchs. One of their principal magazines was at London. Their power became so great as to excite the jealousy of surrounding nations, who forced the towns within their jurisdiction which belonged to the league to renounce it. Their number and power became thus gradually reduced, beginning from the middle of the fifteenth century; and at the present day only Bremen, Hamburg, Lubeck, and Frankfort-on-the-Main remain,—these being recognized by the act establishing the German Confederacy, in 1815, as free Hanseatic cities. Encyc. Brit.

HANSE TOWNS, LAWS OF THE. The maritime ordinances of the Hanseatic towns, first published in German at Lubeck in 1597, and in May, 1614, revised and enlarged. The text of this digest, and a Latin translation, are published with a commentary by Kuricke; and a French translation has been given by Cleirac. See CODE.

HAP. To catch. Thus, "hap the rent," "hap the deep-poll," were formerly used. Tech. Dict.

HARBOR (Sax. *here-berga*, station for an army). A place where ships may ride with safety; any navigable water protected by the surrounding country; a haven. It is public property. 1 Bouvier, Inst. n. 435.

Harbor is to be distinguished from "port," which has a reference to the delivery of cargo. See 7 M. & G. 870; 9 Metc. 371-377; 2 B. & Ald. 460. Thus, we have the "said *harbor* basin and docks of the *port* of Hull." 2 B. & Ald. 60. But they are generally used as synonymous. Webster, Dict.

A state may enact police regulations for the conduct of shipping in any of its harbors. Thus, an act of the state of New York, which provided that harbor-masters should have authority to regulate and station all vessels in the stream of the East and North rivers, within the limits of New York city and the wharves thereof, and to remove from time to time such vessels as were not loading or discharging their cargoes, to make room for such as required to be more immediately accommodated; and that the harbor-masters should determine how far and in what case it was the duty of those in charge of vessels to accommodate each other in their respective situations; and imposing a fine for neglecting or refusing to obey the directions of the harbor-masters, was sustained as being merely a proper regulation prescribing the manner of exercising individual rights over property employed in commerce; 7 Cow. 351; Cooley, Const. Lim. 730. A statute passed for the protection of a harbor, which forbids the removal of stone, gravel, and sand from the beach, is constitutional; 11 Metc. 55.

In Torts. To receive clandestinely or without lawful authority a person for the purpose of so concealing him that another having a right to the lawful custody of such person shall be deprived of the same; for example, the harboring of a wife or on apprentice in order to deprive the husband or the master of them; or, in a less technical sense, it is the reception of persons improperly; 10 N. H. 247; 5 Ill. 498.

The harboring of such persons will subject the harborer to an action for the injury; but, in order to put him completely in the wrong, a demand should be made for their restoration, for in cases where the harborer has not committed any other wrong than merely receiving the plaintiff's wife, child, or apprentice, he may be under no obligation to return them without a demand; 1 Chitty, Pr. 564; 2 No. C. Law Rep. 249; 5 How. 215, 227.

HARD CASES must not make bad equity more than bad law; 6 Iowa, 279.

HARD LABOR. In those states where the penitentiary system has been adopted, convicts who are to be imprisoned, as part of their punishment, are sentenced to perform *hard labor*. This labor is not greater than many freemen perform voluntarily, and the quantity required to be performed is not at all unreasonable. In the penitentiaries of Pennsylvania it consists in being employed in weaving, shoemaking, and such like employments.

Hard labor was first introduced in English prisons in 1706. By the Prison Act of 1865, it is divided into two classes, one for males above sixteen years old, the other for males below that age and females; Moz. & W.

HART. A stag or male deer of the forest five years old complete.

HASP AND STAPLE. A mode of entry in Scotland by which a bailee declares a person heir on evidence brought before himself, at the same time delivering the property over to him by the *hasp and staple* of the

door, which is the symbol of possession; Bell.

HAT MONEY. In Maritime Law. Primage: a small duty paid to the captain and mariners of a ship.

HAUSTUS (Lat. from *haurire*, to draw). **In Civil Law.** The right of drawing water, and the right of way to the place of drawing. L. 1, D. *de Servit. Prœd. Rustic.;* Fleta, l. 4, c. 27, § 9.

HAVE TO. See HABENDUM.

HAVEN. A place calculated for the reception of ships, and so situated, in regard to the surrounding land, that the vessel may ride at anchor in it in safety. Hale, *de Port. Mar.* c. 2; 2 Chitty, Com. Law, 2; 15 East, 304, 305. See CREEK; PORT; HARBOR; ARM OF THE SEA.

HAWBERK. See FIEF D'HAUBERK.

HAWKER. An itinerant or travelling trader, who carries goods about in order to sell them, and who actually sells them to purchasers, in contradistinction to a trader who has goods for sale and sells them in a fixed place of business. Superadded to this, though perhaps not essential, is generally understood one who not only carries goods for sale, but seeks for purchasers, either by outcry, which some lexicographers conceive as intimated by the derivation of the word, or by attracting notice and attention to them, as goods for sale, by an actual exhibition or exposure of them by placards or labels, or by a conventional signal, like the sound of a horn for the sale of fish; 12 Cush. 495. To prevent imposition, hawkers are generally required to take out licenses, under regulations established by the local laws of the states.

HAYBOTE (from *haye*, hedge, and *bote*, compensation). Hedgebote: one of the estovers allowed tenant for life or for years; namely, material to repair hedges or fences, or to make necessary farming utensils; 2 Bla. Com. 35; 1 Washb. R. P. 99.

HAYWARD (from *haye*, hedge, and *ward*, keeping). **In Old English Law.** An officer appointed in the lord's court to keep a common herd of cattle of a town: so called because he was to see that they did not break or injure the hedges of inclosed grounds. His duty was also to impound trespassing cattle, and to guard against pound-breaches. Kitch. 46; Cowel.

HAZARDOUS CONTRACT. A contract in which the performance of that which is one of its objects depends on an uncertain event; La. Civ. Code, art. 1769. See 1 J. J. Marsh. 596; 3 *id.* 84; MARITIME LOAN.

In a fire insurance policy, the terms "hazardous," "extra hazardous," "specially hazardous," and "not hazardous," are well understood technical terms, having distinct meanings. A policy covering only goods "hazardous" and "not hazardous" can not be made to cover goods or merchandise "extra hazardous" or "specially hazardous;" 38 N. Y. 364.

HEAD. The principal source of a stream. Webst. Dict. The head of a creek will be taken to mean the head of its longest branch, unless there be forcible evidence of common reputation to the contrary; 1 Bibb, 75; 2 *id.* 112.

HEAD-BOROUGH. In English Law. An officer who was formerly the chief officer in a borough, but who is now subordinate to the constable. Originally the chief of the tithing, or frank pledge. St. Armand, Leg. Power of Eng. 88. See DECENNARY.

HEAD OF A FAMILY. Householder, one who provides for a family; 19 Wend. 476. There must be the relation of father and child, or husband and wife; 3 Humph. 216; 17 Ala. N. S. 486; *contra*, 20 Mo. 75; 41 Ga. 153. See FAMILY.

HEADLAND. In Old English Law. A narrow piece of unploughed land left at the end of a ploughed field for the turning of the plough. Called, also, *butt.* Kennett, Paroch. Antiq. 587; 2 Leon. 70, case 93; 1 Litt. 13.

HEAD PENCE. An exaction of 40*d.* or more, collected by the sheriff of Northumberland from the people of that county twice in ever seven years, without account to the king. Abolished in 1444; Cowel.

HEALSFANG (from Germ. *hals*, neck, *fangen*, to catch). A sort of pillory, by which the head of the culprit was caught between two boards, as feet are caught in a pair of stocks.

"The fine which every man would have to pay in commutation of this punishment, had it been in use,"—for it was very early disused, no mention of it occurring in the laws of the Saxon kings. Anc. Laws & Inst. of Eng. Gloss; Spelman, Gloss.

HEALTH. Freedom from pain or sickness; the most perfect state of animal life. It may be defined, the natural agreement and concordant disposition of the parts of the living body.

Public health is an object of the utmost importance, and has attracted the attention of the national and state legislatures.

By the act of Congress of the 25th of February, 1799, 1 Story, Laws, 564, it is enacted: *sect.* 1. That the quarantines and other restraints, which shall be established by the laws of any state, respecting any vessels arriving in or bound to any port or district thereof, whether coming from a foreign port or some other port of the United States, shall be observed and enforced by all officers of the United States in such place; *sect.* 4. In times of contagion the collectors of the revenue may remove, under the provisions of the act, into another district; *sect.* 5. The judge of any district court may, when a contagious disorder prevails in his district, cause the removal of persons confined in prison under the laws of the United States, into another district; *sect.* 6. In case of the prevalence of a contagious disease at the seat of government, the president of the United States may direct the removal of any or all public offices to a place of safety; *sect.* 7. In case of such contagious disease at the seat of

government, the chief justice, or, in case of his death or inability, the senior associate justice, of the supreme court of the United States, may issue his warrant to the marshal of the district court within which the supreme court is by law to be holden, directing him to adjourn the said session of the said court to such other place within the same or adjoining district as he may deem convenient. And the district judges, under the same circumstances, have the same power to adjourn to some other part of their several districts.

By the act of March 3, 1879, ch. 202, § 1, 20 Stat. at L. 484, R. S. Suppl. 480, enforced by subsequent acts, a National Board of Health was established, to consist of seven members appointed by the president, and of four members detailed from the departments, whose duties shall be to obtain information upon all matters affecting the public health, to advise the heads of departments and state executives, to make necessary investigations at any places in the United States, or at foreign ports, and to make rules guarding against the introduction of contagious diseases into the country, and their spread from state to state.

The protection of cattle from contagious diseases has received legislative attention in some of the states. In Pennsylvania, the governor may make proclamation whenever pleuro-pneumonia exists among the cattle in any county, and adopt means, such as the quarantining of affected places, to prevent its spread; Penna. Laws, May 1, 1879. The introduction of cattle into Virginia, between March 10, and October 10, without careful inspection, is forbidden; Va. Laws, April 2, 1879.

Closely connected with the subject of *health* is the adulteration of food. The English Sale of Food and Drugs Act (38 & 39 Vict. c. 63, § 6) provides that "no person shall sell to the prejudice of the purchaser any article of food" not of the quality demanded, and authorizes the appointment of a public analyst with power to examine and certify samples of food, drinks, and drugs; L. R. 4 Q. B. D. 233; L. R. 3 Ex. D. 176. A state analyst with similar powers has been appointed in Wisconsin; Wis. Laws, March 27, 1880. This is a more practical measure than has been attempted in the previous legislation throughout the country, where the mode of detection and proof have been left to the operation of general rules.

Offences against the provisions of the health laws are generally punished by fine and imprisonment. There are offences against public health, punishable by the common law by fine and imprisonment, such, for example, as selling unwholesome provisions. 4 Bla. Com. 162; 2 East, Pl. Cr. 822; 6 *id.* 133–141; 3 Maule & S. 10; 4 Campb. 10.

Injuries to the health of particular individuals are, in general, remedied by an action on the case, or perhaps, in some instances, for breach of contract, and may be also by abatement, in some cases of nuisance. See 4 Bla. Com. 197; Smith, For. Med. 37–39; NUISANCE; ABATEMENT; QUARANTINE; CONTAGIOUS DISEASES.

HEALTH OFFICER. The name of an officer invested with power to enforce the health laws. The powers and duties of health officers are regulated by local laws.

HEARING. In Chancery Practice. The trial of a chancery suit; 24 Wis. 165; 112 Mass. 339.

The hearing is conducted as follows. When the cause is called on in court, the pleadings on each side are opened in a brief manner to the court by the junior counsel for the plaintiff; after which the plaintiff's leading counsel states the plaintiff's case and the points in issue, and submits to the court his arguments upon them. Then the depositions (if any) of the plaintiff's witnesses, and such parts of the defendant's answer as support the plaintiff's case, are read by the plaintiff's solicitor; after which the rest of the plaintiff's counsel address the court. Then the same course of proceedings is observed on the other side, excepting that no part of the defendant's answer can be read in his favor if it be replied to. The leading counsel for the plaintiff is then heard in reply; after which the court pronounces the decree. 14 Viner, Abr. 233; Comyns, Dig. *Chancery*, (T 1, 2, 3); Daniell, Chanc. Pract.

In Criminal Law. The examination of a prisoner charged with a crime or misdemeanor, and of the witnesses for the accused. See EXAMINATION.

HEARSAY EVIDENCE. That kind of evidence which does not derive its value solely from the credit to be given to the witness himself, but rests also, in part, on the veracity and competency of some other person. 1 Phill. Ev. 185.

The term applies to written as well as oral matter; but the writing or words are not necessarily hearsay, because those of a person not under oath. Thus, *information* on which one has acted; 2 B. & Ad. 845; 9 Johns. 45; the *conversation* of a person suspected of insanity; 3 Hagg. Eccl. 574; 2 Ad. & E. 3; 7 *id.* 313; *replies* to inquiries; 1 Taunt. 364; 8 Bing. 320; 9 *id.* 359; 5 Mass. 444; 11 Wend. 110; 1 Conn. 387; 29 Ga. 718; *general reputation;* 2 Esp. 482; 3 *id.* 236; 2 Stark. 116; 2 Campb. 512; 33 Ala. N. S. 425; *expressions of feeling;* 8 Bing. 376; 8 Watts, 355; 4 M'Cord, 38; 18 Ohio, 99; 7 Cush. 581; 1 Head, 373; see 45 Me. 392; *general repute* in the family, in questions of pedigree; 13 Ves. 140, 514; 3 Russ. & M. 147; 1 Cr. M. & R. 919; 2 C. & K. 701; 15 East, 29; 4 Rand. 607; 3 Dev. & B. 91; 18 Johns. 37; 2 Conn. 347; 6 Cal. 197; 4 N. H. 371; 1 How. 231; see 28 Vt. 416; a great variety of declarations; see DECLARATION; *entries* made by third persons in the discharge of official duties; 3 B. & Ad. 890; 1 Bing. N. C. 654; 3 *id.* 408; 2 Y. & C. 249; 4 Q. B. 132; 1 Cr. M. & R. 347; and see 8 Wheat. 326; 15 Mass. 380; 6 Cow. 162; 16 S. & R. 89; 4 Mart. La. N. S. 383; 6 *id.* 351; 12 Vt. 178; 15 Conn. 206; entries in the party's shopbook; 8 Watts, 544; 9 S. & R. 285; 4 Mass. 455; 13 *id.* 427; 8 Metc. 269; 1 N. & M'C. 186; 2 M'Cord, 328; 4 *id.* 76; 1 Halst. 95; 1 Iowa, 53; 8 *id.* 163; 1 Greenl. Ev. §§ 119, 120; or other books kept in the regular course of business; 7 C. & P. 720; 10 Ad. & E. 598; 3 Campb. 305; 8 Wheat. 320; 15 Mass. 380; 20 Johns. 168; 15 Conn. 206; *indorsements* of partial payments; 2 Stra. 827; 2 Campb. 321; 4 Pick. 110; 17 Johns. 182; 2 M'Cord, 418; have been held admissible as original evidence

under the circumstances, and for particular purposes.

As a general rule, hearsay reports of a transaction, whether oral or written, are not admissible as evidence; 1 Greenl. Ev. § 124; 9 Ind. 572; 16 N. Y. 381; 5 Iowa, 532; 14 La. An. 830; 6 Wisc. 63. The rule applies to evidence given under oath in a cause between other litigating parties; 1 East, 373, 2 *id.* 54; 3 Term, 77; 7 Cra. 296.

Matters relating to public interest, as, for example, a claim to a ferry or highway, may be proved by hearsay testimony; 1 Star. Ev. 195; 6 M. & W. 234; 1 Maule & S. 679; 1 Cr. M. & R. 929; 19 Conn. 250; but the matter in controversy must be of public interest; 2 B. & Ad. 245; 4 *id.* 273; 29 Barb. 593; 14 Md. 398; 6 Jones, No. C. 459; the declarations must be those of persons supposed to be dead; 11 Price, 162; 1 C. & K. 58; 12 Vt. 178; and must have been made before controversy arose; 13 Ves. 514; 3 Campb. 444; 4 *id.* 417. The rule extends to deeds, leases, and other private documents; 5 Esp. 60; 10 B. & C. 17; 1 Maule & S. 77; 4 *id.* 486; maps; 2 Moore & P. 525; 19 Conn. 250; and verdicts; 1 East, 355; 9 Bingh. 465; 10 Ad. & E. 151; 7 C. & P. 181.

Ancient documents purporting to be a part of the *res gestæ* are also admissible although the parties to the suit are not bonnd; 5 Term, 413, n.; 5 Price, 312; 4 Pick. 160. See 2 C. & P. 440; 3 Johns. Cas. 283; 1 H. & J. 174; 4 Denio, 201. See DECLARATION; DYING DECLARATIONS.

HEARTH-MONEY. A tax, granted by 13 & 14 Car. II. c. 10, abolished 1 Will. & Mary, st. 1, c. 10, of two shillings on every hearth or stove in England and Wales, except such as pay not to the church and poor. Jacob, Law Dict. Commonly called *chimney-money. Id.*

HEARTH-SILVER. A sort of *modus* for tithes, viz.: a prescription for cutting down and using for fuel the tithe of wood. 2 Burn, Eccl. Law, 304.

HEBBERMAN. An unlawful fisher in the Thames below London bridge; so called because they generally fished at *ebbing tide* or *water.* 4 Hen. VII. c. 15; Jacob, Law Dict.

HEBBERTHEF. The privilege of having goods of thief and trial of him within such a liberty. Cartular. S. Edmundi MS. 163; Cowel.

HEDAGIUM (Sax. *heda, hitha,* port). A toll or custom paid at the *hith,* or wharf, for landing goods, etc., from which an exemption was granted by the king to some particular persons and societies. Cartular. Abbatiæ de Redinges; Cowel.

HEDGE-BOTE. Wood used for repairing hedges or fences. 2 Bla. Com. 35; 16 Johns. 15. HAYBOTE.

HEIFER. A young cow which has not had a calf. A beast of this kind two years and a half old was held to be improperly described in the indictment as a cow. 2 East, Pl. Cr. 616; 1 Leach, 105.

HEIR. At Common Law. He who is born or begotten in lawful wedlock, and upon whom the law casts the estate in lands, tenements, or hereditaments immediately upon the death of his ancestor. Thus, the word does not strictly apply to personal estate; Wms. Per. Pr.

The term heir has a very different signification at common law from what it has in those states and countries which have adopted the civil law. In the latter, the term applies to all persons who are called to the succession, whether by the act of the party or by operation of law. The person who is created universal successor by a will is called the testamentary heir; and the next of kin by blood is, in cases of intestacy, called the heir-at-law, or heir by intestacy. The executor of the common law is in many respects not unlike the testamentary heir of the civil law. Again, the administrator in many respects corresponds with the heir by intestacy. By the common law, executors—unless expressly authorized by the will—and administrators have no right except to the personal estate of the deceased; whereas the heir by the civil law is authorized to administer both the personal and real estate. 1 Brown, Civ. Law, 344; Story, Confl. Laws, § 508.

No person is heir of a living person. A person occupying a relation which may be that of heirship is, however, called heir apparent or heir presumptive; 2 Bla. Com. 208. A monster cannot be heir; Co. Litt. 7 *b*. A bastard cannot be heir; 2 Kent, 208. See BASTARD; DESCENT.

In the word heirs is comprehended heirs of heirs *in infinitum*; Co. Litt. 7 *b*, 9 *a*; Wood, Inst. 69.

According to many authorities, heir may be *nomen collectivum*, as well in a deed as in a will, and operate in both in the same manner to the word heirs; 1 Rolle, Abr. 253; Ambl. 453; T. Jones, 111; Cro. Eliz. 313; 1 Burr. 38; 10 Viner, Abr. 233. But see 2 Prest. Est. 9, 10. In wills, in order to effectuate the intention of the testator, the word heirs is sometimes construed to mean the next of kin; 1 Jac. & W. 388; and statutory next of kin; 41 L. T. Rep. N. S. 209; 2 Hawks, 472; the word "heir" can be construed as "distributees" or "representatives;" 84 Penn. 245; and children; Ambl. 273. See, further, as to the force and import of this word, 2 Ventr. 311; 1 P. Wms. 229; 2 *id.* 1, 369; 3 Brown, P. C. 60, 454; 2 W. Bla. 1010; 4 Ves. 26, 766, 794; 2 Atk. 89, 580; 5 East, 533; 5 Burr. 2615; 11 Mod. 189.

In Civil Law. He who succeeds to the rights and occupies the place of a deceased person. See the following titles, and HÆRES.

HEIR APPARENT. One who has an indefeasible right to the inheritance, provided he outlive the ancestor. 2 Bla. Com. 208.

HEIRS, BENEFICIARY. In Civil Law. Those who have accepted the succession under the benefit of an inventory regu-

larly made. La. Civ. Code, art. 879. If the heir apprehend that the succession will be burdened with debts beyond its value, he accepts with benefit of inventory, and in that case he is responsible only for the value of the succession.

HEIR, COLLATERAL. One who is not of the direct line of the deceased, but comes from a collateral line: as, a brother, sister, an uncle and aunt, a nephew, niece, or cousin, of the deceased.

HEIR, CONVENTIONAL. In Civil Law. One who takes a succession by virtue of a contract—for example, a marriage contract—which entitles the heir to the succession.

HEIRS, FORCED. Those who cannot be disinherited. See FORCED HEIRS.

HEIR, GENERAL. Heir at common law.

HEIRS, IRREGULAR. In Louisiana. Those who are neither testamentary nor legal, and who have been established by law to take the succession. See La. Civ. Code, art. 874. When the deceased has left neither lawful descendants nor ascendants, nor collateral relations, the law calls to his inheritance either the surviving husband or wife, or his or her natural children, or the state. *Id.* art. 911. This is called an irregular succession.

HEIR AT LAW. He who, after his ancestor's death intestate, has a right to all lands, tenements, and hereditaments which belonged to him or of which he was seised. The same as heir general.

HEIR, LEGAL. In Civil Law. A legal heir is one who is of the same blood as the deceased, and who takes the succession by force of law. This is different from a testamentary or conventional heir, who takes the succession in virtue of the disposition of man. See La. Civ. Code, art. 873, 875; Dict. de Jurisp. *Héritier légitime.* There are three classes of legal heirs, to wit: the children and other lawful descendants, the fathers and mothers and other lawful ascendants, and the collateral kindred. La. Civ. Code, art. 883.

HEIR-LOOM. Chattels which, contrary to the nature of chattels, descend to the heir along with the inheritance, and do not pass to the executor of the last proprietor.

This word seems to be compounded of *heir* and *loom*, that is, a frame, viz. to weave in. Some derive the word loom from the Saxon *loma*, or *geloma*, which signifies utensils or vessels generally. However this may be, the word *loom*, by time, is drawn to a more general signification than it bore at the first, comprehending all implements of household, as tables, presses, cupboards, bedsteads, wainscots, and which, by the custom of some countries, having belonged to a house, are never inventoried after the decease of the owner as chattels, but accrue to the heir with the house itself. Minshew. The term *heir-looms* is applied to those chattels which are considered as annexed and necessary to the enjoyment of an inheritance.

Charters, deeds, and other evidences of the title of the land, together with the box or chest in which they are contained, the keys of a house, and fish in a fish-pond, are heir-looms. Co. Litt. 3 *a*, 185 *b*; 7 Co. 17 *b*, Cro. Eliz. 372; Brooke, Abr. *Charters*, pl. 13; 2 Bla. Com. 28; 14 Viner, Abr. 291.

HEIR, PRESUMPTIVE. One who, in the present circumstances, would be entitled to the inheritance, but whose rights may be defeated by the contingency of some nearer heir being born; 2 Bla. Com. 208. In Louisiana, the presumptive heir is he who is the nearest relation of the deceased capable of inheriting. This quality is given to him before the decease of the person from whom he is to inherit, as well as after the opening of the succession, until he has accepted or renounced it; La. Civ. Code, art. 876.

HEIR, TESTAMENTARY. In Civil Law. One who is constituted heir by testament executed in the form prescribed by law. He is so called to distinguish him from the legal heirs, who are called to the succession by the law; and from conventional heirs, who are so constituted by a contract *inter vivos*. See HÆRES FACTUS; DEVISEE.

HEIRS, UNCONDITIONAL. In Louisiana. Those who inherit without any reservation, or without making an inventory, whether their acceptance be express or tacit; La. Civ. Code, art. 878.

HEIRESS. A female heir to a person having an estate of inheritance. When there are more than one, they are called *co-heiresses*, or *co-heirs*.

HEIRSHIP MOVABLES. In Scotch Law. The movables which go to the heir, and not to the executor, that the land may not go to the heir completely dismantled, such as the best of furniture, horses, cows, etc., but not fungibles. Hope, Minor Pr. 538; Erskine, Inst. 3. 8. 13–17 *et seq.*; Bell, Dict.

HENGHEN (*ergastulum*). **In Saxon Law.** A prison, or house of correction; Anc. Laws & Inst. of Engl. Gloss.

HEPTARCHY. The name of the kingdom or government established by the Saxons on their establishment in Britain: so called because it was composed of *seven* kingdoms, namely, Kent, Essex, Sussex, Wessex, East Anglia, Mercia, and Northumberland.

HERALD (from French *hérault*). An officer whose business it is to register genealogies, adjust ensigns armorial, regulate funerals and coronations, and, anciently, to carry messages between princes and proclaim war and peace.

In England, there are three chief heralds, called *kings-at-arms*, of whom *Garter* is the principal, instituted by king Henry V., whose office is to attend the knights of the Garter at their solemnities, and to marshal the funerals of the nobility. The next is *Clarencieux*, instituted by Edward IV., after he became duke of Clarence, and whose proper office is to arrange the funerals of all the lesser nobility, knights, and squires

on the south side of Trent. The third *Norroy* (*north roy*), who has the like office on the north side of Trent. There are, also, six inferior heralds, who were created to attend dukes or great lords in their military expeditions. The office, however, has grown much into disuse,—so much falsity and confusion having crept into their records that they are no longer received in evidence in any court of justice. This difficulty was attempted to be remedied by a standing order of the house of lords, which requires *Garter* to deliver to that house an exact pedigree of each peer and his family on the day of his first admission; 3 Bla. Com. 105; Encyc. Brit.

HERALDS' COLLEGE. In 1450, the heralds in England were collected into a college by Richard II. The earl marshal of England was chief of the college, and under him were three kings-at-arms (styled Garter, Clarencieux, Norroy), six heralds-at-arms (styled of York, Lancaster, Chester, Windsor, Richmond, and Somerset), and four pursuivants-at-arms (styled Blue mantle, Rouge croix, Rouge dragon, and Portcullis). This organization still continues. Encyc. Brit.

HERBAGE. In English Law. An easement which consists in the right to pasture cattle on another's ground.

HERD-WERCK. Customary uncertain services as herdsmen, shepherds, etc. Anno 1166, Regist. Ecclesiæ Christi Cant. MS.; Cowel.

HEREBANNUM. Calling out the army by proclamation. A fine paid by freemen for not attending the army. A tax for the support of the army. Du Cange.

HEREDAD. In Spanish Law. A portion of land that is cultivated. Formerly it meant a farm, *hacienda de campo*, real estate.

HEREDERO. In Spanish Law. Heir; he who, by legal or testamentary disposition, succeeds to the property of a deceased person. "*Hœres censeatur cum defuncto una eademque persona.*" Las Partidas, 7. 9. 13.

HEREDITAMENTS. Things capable of being inherited, be it corporeal or incorporeal, real, personal, or mixed, and including not only lands and everything thereon, but also heir-looms, and certain furniture which, by custom, may descend to the heir together with the land. Co. Litt. 5 *b*; 2 Bla. Com. 17. By this term such things are denoted as may be the subject-matter of inheritance, but not the inheritance itself; it cannot, therefore, by its own intrinsic force enlarge an estate *primâ facie* a life estate, into a fee; 2 B. & P. 251; 8 Term, 503.

HEREDITARY. That which is the subject of inheritance.

HERES. See Hæres.

HERIOT. In English Law. A customary tribute of goods and chattels, payable to the lord of the fee on the decease of the owner of the land.

Heriot service is such as is due upon a special reservation in the grant or lease of lands, and therefore amounts to little more than a mere rent. Heriot custom arises upon no special reservation whatsoever, but depends merely upon immemorial usage and custom. See 2 Bla. Com. 97, 422; Comyns, Dig. *Copyhold* (K 18); Bacon, Abr.; 2 Saund.; 1 Vern. 441.

HERISCHILD. A species of English military service.

HERISCHULDÆ. A fine for disobedience to proclamation of warfare. Skene.

HERITABLE BOND. In Scotch Law. A bond for a sum of money to which is added, for further security of the creditor, a conveyance of land or heritage to be held by the creditor as pledge. 1 Ross, Lect. 76; 2 *id.* 324.

HERITABLE JURISDICTION. In Scotch Law. Grants of criminal jurisdiction made to great families for the better execution of justice. Abolished by 20 Geo. II. c. 43. Bell, Dict.

HERITABLE RIGHTS. In Scotch Law. Rights which go to the heir; generally, all rights in or connected with lands. Bell, Dict. *Heritable.*

HERITAGE. In Civil Law. Every species of immovable which can be the subject of property: such as lands, houses, orchards, woods, marshes, ponds, etc., in whatever mode they may have been acquired, either by descent or purchase. 3 Toullier, 472. See Co. Litt. s. 731.

HERMANDAD (called also, *Santa Hermandad*). **In Spanish Law.** A fraternity formed among different towns and villages to prevent the commission of crimes, and to prevent the abuses and vexations to which they were subjected by men in power.

To carry into effect the object of this association, each village and town elected two *alcaldes*,—one by the nobility and the other by the community at large. These had under their order inferior officers, formed into companies, called *cuad villeros*. Their duty was to arrest delinquents and bring them before the *alcaldes*, when they were tried substantially in the ordinary form. This tribunal, established during the anarchy prevailing in feudal times, continued to maintain its organization in Spain for centuries; and various laws determining its jurisdiction and mode of proceeding were enacted by Ferdinand and Isabella and subsequent monarchs. Nov. Recop. tit. 35, b. 12. § 7. The abuses introduced in the exercise of the functions of the tribunals caused their abolition, and the *santas hermandades* of Ciudad Rodrigo, Talavera, and Toledo, the last remnants of these anomalous jurisdictions, were abolished by the law of the 7th May, 1835.

HERMAPHRODITES. Persons who have in the sexual organs the appearance of both sexes. They are adjudged to belong to that sex which prevails in them; Co. Litt. 2, 7; Domat, Lois Civ. liv. 1, t. 2, s. 1, n. 9.

The sexual characteristics in the human species are widely separated, and the two sexes are never, perhaps, united in the same individual; 2 Dungl. Hum. Physiol. 304; 1 Beck, Med. Jur. 94–110. Cases of malformation, however, sometimes are found, in which it is very difficult to decide to which

sex the person belongs. See 2 Med. Exam. 314; I Briand, Med. Leg. c. 2, art. 2, § 2, n. 2; Guy, Med. Jur. 42, 47; 1 Beck, Med. Jur. 11th ed. 164 *et seq.;* Wharton & S. Med. Jur. § 408 *et seq.*

HERMENEUTICS (Greek, ἑρμηνεύω, to interpret). The art and science, or body of rules, of truthful interpretation. It has been used chiefly by theologians; but Zachariæ, in "An Essay on General Legal Hermeneutics" (Versuch einer allg. Hermeneütik des Rechts), and Dr. Lieber, in his work on Legal and Political Interpretation and Construction, also make use of it. See INTERPRETATION; CONSTRUCTION.

HIDAGE. In Old English Law. A tax levied, in emergencies, on every *hide* of *land;* the exemption from such tax. Bract. lib. 2, c. 56. It was payable sometimes in money, sometimes in ships or military equipments: *e. g.* in the year 994, when the Danes landed in England, every three hundred hides furnished a ship to king Ethelred, and every eight hides one pack and one saddle. Jacob, Law Dict.

HIDALGO (spelled, also, *Hijodalgo*). **In Spanish Law.** He who, by blood and lineage, belongs to a distinguished family, or is noble by descent. Las Partidas, 2. 12. 3. The origin of this word has given rise to much controversy: for which see Escriche.

HIDE (from Sax. *hyden*, to cover; so, Lat. *tectum*, from *tegere*). **In Old English Law.** A building with a roof; a house.

As much land as might be ploughed with one plough. The amount was probably determined by usage of the locality: some make it sixty, others eighty, others ninety-six, others one hundred or one hundred and twenty, acres. Co. Litt. 5; 1 Plowd. 167; Shepp. Touchst. 93; Du Cange.

As much land as was necessary to support a *hide*, or mansion-house; Co. Litt. 69 *a;* Spelman, Gloss.; Du Cange, *Hida;* 1 Introd. to Domesday, 145. At present the quantity is one hundred acres. Anc. Laws & Inst. of Engl. Gloss.

HIDE LANDS. In Old English Law. Lands appertaining to a *hide*, or mansion. See HIDE.

HIGH COMMISSION COURT. In English Law. An ecclesiastical court of very extensive jurisdiction, for the vindication of the peace and dignity of the church, by reforming, ordering, and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities.

It was erected by stat. 1 Eliz. c. 1, and abolished by 16 Car. II. c. 11.

HIGH CONSTABLE. An officer appointed in some cities with powers generally limited to matters of police, and not more extensive, in these respects, than those of *constables*. See CONSTABLES.

HIGH COURT OF ADMIRALTY. See ADMIRALTY.

HIGH COURT OF DELEGATES. In English Law. A tribunal which formerly exercised appellate jurisdiction over cases brought from the ecclesiastical and admiralty courts.

It was a court of great dignity, erected by the statute 25 Hen. VIII. c. 19. It was abolished, and its jurisdiction transferred to the judicial committee of the privy council. See 2 & 3 Will. IV. c. 92; 3 & 4 Will. IV. c. 41; 6 & 7 Vict. c. 38; 3 Bla. Com. 66.

HIGH COURT OF JUSTICIARY. See COURT OF JUSTICIARY.

HIGH COURT OF PARLIAMENT. In English Law. The English Parliament, as composed of the house of peers and house of commons.

The house of lords sitting in its judicial capacity.

This term is applied to parliament by most of the law writers. Thus, parliament is said by Blackstone to be the supreme court of the kingdom, not only for the making but also for the execution of the laws; 4 Bla. Com. 259. Lord Coke and Lord Hale also apply the term "court" to the whole parliament; and see Finch, Law, 233; Fleta, lib. 2, c. 2. But, from the fact that in judicial proceedings generally the house of commons takes no part, but only in the trial of impeachments, and then only as prosecutor, and from the fact that the house of commons disclaimed possession of judicial powers at the deposition of Richard II., and the twelve judges made a similar decision in 1 Hen. VII., the propriety of this use of the term has been questioned; Bla. Com. Warren, Abr. 215. The propriety of its application would seem to be derived from the claim of parliament to be considered as the successor of the *aula regis*, which was a judicial as well as a legislative body, and, if the succession is established, would be applicable although the judicial power may have been granted to the various courts. See COURTS.

The house of lords only acts in a judicial capacity in civil cases and in most criminal cases. See HOUSE OF LORDS; IMPEACHMENT.

HIGH CRIMES AND MISDEMEANORS. The constitution of the U. S. provides that the president, vice-president, and all civil officers of the U. S. shall be removed from office on impeachment for treason, bribery, and other high crimes and misdemeanors. This does not apply to senators and members of congress, but does to U. S. circuit and district judges; Blount's Trial, 102; Peck's Trial; 10 Law Trials; Chase's Trial; 11 *id.*

HIGH SEAS. The uninclosed waters of the ocean, and also those waters on the seacoast which are without the boundaries of low-water mark. 1 Gall. 624; 5 Mas. C. C. 290; 1 Bla. Com. 110; 2 Hagg. Adm. 398.

The act of congress of April 30, 1790, s. 8, 1 Story, Laws, 84, enacts that if any person shall commit upon the *high seas*, or in any river, haven, basin, or bay, out of the jurisdiction of any particular state, murder, etc., which if com-

mitted within the body of a county would, by the laws of the United States, be punishable with death, every such offender, being thereof convicted, shall suffer death ; and the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular state, shall be in the district where the offender is apprehended, or into which he may first be brought. See 4 Dall. 426 ; 3 Wash. C. C. 515 ; Serg. Const. Law, 334 ; 13 Am. Jur. 279 ; 1 Mas. 147, 152 ; 1 Gall. 624 ; 4 Blatchf. 420. See FAUCES TERRÆ.

HIGH TREASON. In English Law. Treason against the king, in contradistinction from petit treason, which is the treason of a servant towards his master, a wife towards her husband, a secular or religious man towards his prelate. See PETIT TREASON ; TREASON.

HIGH-WATER MARK. That part of the shore of the sea to which the waves ordinarily reach when the tide is at its highest ; 6 Mass. 435 ; 1 Pick. 180 ; 1 Halst. 1 ; 1 Russ. Cr. 107 ; 2 East, Pl. Cr. 803. See SEA-SHORE ; TIDE.

HIGHWAY. A passage, road, or street which every citizen has a right to use. 1 Bouvier, Inst. n. 442 ; 3 Kent, 432 ; 3 Yeates, 421.

The term *highway* is the generic name for all kinds of public ways, whether they be carriage-ways, bridle-ways, foot-ways, bridges, turnpike roads, railroads, canals, ferries, or navigable rivers ; 6 Mod. 255 ; Ang. Highw. c. 1 ; 3 Kent, 432. A *cul de sac* is also a highway ; 11 East, 375, note ; 18 Q. B. 870 ; 8 Allen, 242 ; 24 N. Y. 559 (overruling 23 Barb. 103) ; 87 Ill. 189 ; s. c. 29 Am. Rep. 49, and note.

Highways are created either by legislative authority, by dedication, or by necessity. *First, by legislative authority.* In England, the laying out of highways is regulated by act of parliament ; in this country, by general statutes, differing in different states. In England, the uniform practice is to provide a compensation to the owner of the land taken for highways. In the act authorizing the taking, in the United States, such a provision must be made, or the act will be void under the clause in the several state constitutions that "private property shall not be taken for public use without just compensation." The amount of such compensation may be determined either by a jury or by commissioners, as shall be prescribed by law ; 1 Bla. Com. 139 ; Ang. Highw. c. 2 ; 8 Price, 535 ; 12 Mass. 466 ; 18 Pick. 501 ; 2 Johns. Ch. 162 ; 12 Barb. 227 ; 25 Wend. 462 ; 21 N. H. 358 ; Baldw. 222 ; 3 Watts, 292 ; 16 N. Y. 97 ; 14 Wisc. 609. In case the statute makes no provision for indemnity for land to be taken, an injunction may be obtained to prevent the taking ; 3 Paige, Ch. 45 ; 2 Johns. Ch. 162 ; 9 Ind. 433 ; 34 Me. 247 ; or an action at law may be maintained after the damage has been committed ; 5 Cow. 165 ; 16 Conn. 98 ; and cases cited above.

Second, by dedication. This consists of two things : first, on the part of the owner of the fee, an appropriation of the land to be used by the public, generally, as a common way ; second, on the part of the public, an acceptance of the land, so appropriated, for such use. And only one having the fee of the land can dedicate ; 3 Sandf. 502 ; 5 B. & Ald. 454 ; 69 Mo. 642. Against the owner, dedication may be proved by his express declaration, whether by deed or by parol, or by any act unequivocally evincing his intention to dedicate, as by his opening a way for the public over his land, or it may be implied from his acquiescence in the use of his land for a public way. Where acquiescence is the only evidence of dedication, it must ordinarily have continued for twenty years ; though any shorter period will suffice, if such acquiescence cannot reasonably be accounted for except upon the supposition of an intent to dedicate. In all cases, the intent to dedicate—the *animus dedicandi*—is the indispensable ingredient of the proof against the owner of the fee ; Ang. Higw. c. 3 ; 3 Kent, 451 ; 5 Taunt. 125 ; 30 E. L. & Eq. 207 ; 11 East, 375 ; 11 M. & W. 827 ; 6 Pet. 431 ; 19 Pick. 405 ; 5 W. & S. 141 ; 3 Tenn. Ch. 688 ; 87 Ill. 64. There may be a dedication to the public for a limited purpose, as for a foot-way, horse-way, or drift-way, but not to a limited part of the public ; and such partial dedication will be merely void ; 11 M. & W. 827 ; 8 Cush. 195. The proper proof of an acceptance is the use of the way by the public generally ; 5 B. & Ad. 469 ; 1 R. I. 93 ; 31 Conn. 38 ; 54 Me. 361 ; Washb. Ease. 139 ; but it has been held, in some states, that an acceptance to be effectual must be made by the body chargeable with the duty of repairing ; 13 Vt. 424 ; 6 N. Y. 257 ; 16 Barb. 251 ; 8 Gratt. 632 ; 2 Ind. 147.

Third, by necessity. If a highway be impassable, from being out of repair or otherwise, the public have a right to pass in another line, and, for this purpose, to go on the adjoining ground, even when sown with grain and enclosed with a fence ; but they must do no unnecessary damage ; 1 Ld. Raym. 725 ; Cro. Car. 366 ; 1 Rolle, Abr. 390 *a* ; 7 Cush. 408 ; Yelv. 142, n. 1 ; 2 Show. 28 ; 7 Barb. 309. This right, however, is only temporary and gives the public no permanent easement ; 44 N. H. 628.

A highway is simply an easement or servitude, carrying with it, as its incidents, the right to use the soil for the purposes of repair and improvement ; and, in cities, for the more general purposes of sewerage, the distribution of light and water, and the furtherance of public morality, health, trade, and convenience. The owner of the land over which it passes retains the fee and all rights of property not incompatible with the public enjoyment, such as the right to the herbage, the trees and fruit growing thereon, or minerals below, and may work a mine, sink a drain or cellar, or carry water in pipes beneath it, or sell the soil if it be done without injury to the highway ; 4 Viner, Abr. 502 ; Comyns, Dig. *Chemin* (A 2) ; Ang. Highw. c. 7 ; 1 Burr. 133 ; 1 N. H. 16 ; 1 Sumn.

21; 3 Rawle, 495; 10 Pet. 25; 6 Mass. 454; 15 Johns. 447; 14 Barb. 629; 31 N. Y. 151; 34 Vt. 336; 28 Conn. 165. He may maintain ejectment for encroachments thereon, or an assize if disseised of it; 3 Kent, 432; Adams, Eject. 19; 9 S. & R. 26; 1 Conn. 135; 2 Sm. Lead. Cas. 141; or trespass against one who builds on it; 2 Johns. 357; or who digs up and removes the soil; 12 Wend. 98; or cuts down trees growing thereon; 1 N. H. 16; or who stops upon it for the purpose of using abusive or insulting language; 11 Barb. 390. If a railroad be laid upon a highway, even though laid by legislative authority, the owner of the fee is entitled to compensation for the additional servitude; 2 E. D. Sm. 97; 3 Hill, N. Y. 567; 4 Zabr. 592; 16 Miss. 649. The owners on the opposite sides *primâ facie* own respectively to the centre line of the highway; Ang. Highw. § 313; and a grant of land bounded "by" or "on," or "along" a highway carries, by presumption, the fee to the centre line, if the grantor own so far; though this presumption may be rebutted by words showing an intention to exclude the highway, such as, "by the side of," "by the margin of," or "by the line of" the highway, or other equivalent expression; 25 Alb. L. J. 193; Ang. Highw. § 315; 11 Me. 463; 4 Day, 228; 13 N. H. 381; 8 Metc. 266; 2 R. I. 508; 60 N. Y. 609; 2 Whart. 18. Whenever the highway is abandoned or lost, the owner of the soil recovers his original unincumbered dominion; Ang. Highw.; 4 Mass. 429; 6 Pet. 498, 513; 8 Watts, 172; 15 Johns. 447.

In England, the inhabitants of the several parishes are *primâ facie* bound to repair all highways lying within them, unless by prescription or otherwise they can throw the burden upon particular persons; Shelf. Highw. 44; 1 Hawk. Pl. Cr. 76; 5 Burr. 1700; 12 Mod. 409. In this country, the English parochial system being unknown, this feature of the common law does not prevail. The liability to repair is here determined by statute, and, in most of the states, devolves upon the towns; 8 Barb. 645; 13 Pick. 343; 1 Humphr. 217. The liability being thus created, its measure is likewise to be ascertained by statute, the criterion being, generally, safety and convenience for travel, having reference to the natural characteristics of the road and the public needs; Ang. Highw. § 259; 2 W. & M. 337; 19 Vt. 470; 4 Cush. 307, 365; 14 Me. 198. For neglect to repair, the parish in England, and in this country the town or body chargeable, is indictable as for a nuisance; 2 Wms. Saund. 158, n. 4; 3 Term, 265; 28 N. H. 195; Ang. Highw. § 275; and, in many states, is made liable, by statute, to an action on the case for damages in favor of any person who may have suffered special injury by reason of such neglect; 17 How. 161; 3 Cush. 174; 22 Penn. 384; 31 Me. 299; Ang. Highw. § 286. The duty of repair may, in this country, rest on an individual to the exclusion of the town; 23 Wend. 446; or on a corporation who, in pursuance of their charter, build a road, and levy tolls for the expense of maintaining it; 7 Conn. 86. The taking of toll is *primâ facie* evidence of the duty; 1 Hawks, 451.

Any act or obstruction which incommodes or impedes the lawful use of a highway by the public, except as arises by necessity from unloading wagons, putting up buildings, etc., is a common-law nuisance; 4 Steph. Com. 294; 1 Hawk. Pl. Cr. c. 76; Ang. Highw. § 345; 9 Wend. 584; 1 Denio, 524; 8 Ohio St. 358; 29 Am. L. Reg. 342; and may be abated by any one whose passage is thereby obstructed; Ang. Highw. § 274; 3 Steph. Com. 5; 5 Co. 101; 10 Mass. 70; 18 Wis. 265; or the person causing or maintaining the same may be indicted; 1 Hawk. Pl. Cr. c. 76; 2 Saund. 158, 159, note; 7 Hill, N. Y. 575; 13 Metc. Mass. 115; 2 R. I. 493; 29 Am. L. Reg. 342; or may be sued for damages in an action on the case by any one specially injured thereby; Co. Litt. 56 *a*; 1 Binn. 463; 7 Cow. 609; 19 Pick. 147; 6 Oreg. 378; S. C. 25 Am. Rep. 531, and note; 2 Ill. 229; 53 Barb. 629; 5 Blackf. 35. At common law the public have no right to pasture cattle on the highways; 2 H. Black. 527; 16 Mass. 33; 5 Wis. 27.

It is the duty of travellers upon highways, for the purpose of avoiding collision and accident, to observe due care in accommodating themselves to each other. To observe this purpose, it is the rule in England, that, in meeting, each party shall bear or keep to the left; and in this country the reverse,—that is, to the right; 2 Steph. N. P. 984; Story, Bailm. § 599; 2 Dowl. & R. 255. This rule, however, may and ought to be varied, where its observance would defeat its purpose; 8 C. & P. 103; 12 Metc. 415; 23 Penn. 196. The rule does not apply to equestrians and foot-passengers; 24 Wend. 465; 2 D. Chipm. 128; 8 C. & P. 373, 691. It is another rule that travellers shall drive only at a moderate rate of speed, furious driving on a thronged thoroughfare being an indictable offence at common law; 1 Pet. 590; 13 *id.* 181; 8 C. & P. 694. In case of injury by reason of the non-observance of these rules or of other negligence, as by the use of unsuitable carriages or harness, or horses imperfectly trained, the injured party is entitled to recover his damages in an action on the case against the culpable party, unless the injury be in part attributable to his own neglect; Ang. Highw. § 345 *et seq.*; 2 Taunt. 314; 1 Pick. 345; 11 East, 60; 15 Conn. 359; 5 W. & S. 544; 5 C. & P. 379; 6 Cow. 191; 19 Wend. 399. And see BRIDGE; TURNPIKE; RAILROAD; CANAL; FERRY; RIVER; STREET; WAY. See Thomps. Highw.; 24 Alb. L. J. 464.

HIGHWAYMAN. A robber on the highway.

HIGLER. **In English Law.** A person who carries from door to door, and sells by retail, small articles of provisions, and the like.

HIGUELA. **In Spanish Law.** The written acknowledgment given by each of the

heirs of a deceased person, showing the effects he has received from the succession.

HILARY TERM. In English Law. A term of court, beginning on the 11th and ending on the 31st of January in each year. Superseded (1875) by Hilary Sittings, which begin January 11th and end on the Wednesday before Easter.

HINDU LAW. The system of native law prevailing among the Gentoos, and administered by the government of British India.

In all the arrangements for the administration of justice in India, made by the British government and the East India Company, the principle of reserving to the native inhabitants the continuance of their own laws and usages within certain limits has been uniformly recognized. The laws of the Hindus and Mohammedans have thus been brought into notice in England, and are occasionally referred to by writers on English and American law. The native works upon these subjects are very numerous. The chief English republications of the Hindu law are, Colebrooke's Digest of Hindu Law, London, 1801; Sir Wm. Jones's Institutes of Hindu Law, London, 1797. For a fuller account of the Hindu Law, and of the original Digests and Commentaries, see Morley's Law of India, London, 1858, and Macnaghten's Principles of Hindu and Mohammedan Law, London, 1860. The principal English republications of the Mohammedan Law are Hamilton's Hedaya, London, 1791; Baillie's Digest, Calcutta, 1805; Précis de Jurisprudence mussulmane selon le Rite malikite, Paris, 1848; and the treatises on Succession and Inheritance translated by Sir William Jones. See, also, Norton's Cases on Hindu Law of Inheritance. An approved outline of both systems is Macnaghten's Principles of Hindu and Mohammedan Law; also contained in the "Principles and Precedents" of the same law previously published by the same author.

HIPOTECA. In Spanish Law. A mortgage of real property. Johnson, Civ. Law of Spain, 156 [149]; White, New Recop. b. 2, tit. 7.

HIRE. A bailment in which compensation is to be given for the use of a thing, or for labor and services about it. 2 Kent, 456; Story, Bailm. § 359. The divisions of this species of contract are denoted by Latin names.

Locatio operis faciendi is the hire of labor and work to be done or care and attention to be bestowed on the goods let by the hirer, for a compensation.

Locatio operis mercium vehendarum is the hire of the carriage of goods from one place to another, for a compensation; Jones, Bailm. 85, 86, 90, 103, 118; 2 Kent, 456; La. Civ. Code, art. 1709–1711.

Locatio rei or *locatio conductio rei* is the bailment of a thing to be used by the hirer for a compensation to be paid by him.

This contract arises from the principles of natural law: it is voluntary, and founded in consent; it involves mutual and reciprocal obligations; and it is for mutual benefit. In some respects it bears a strong resemblance to the contract of sale; the principal difference between them being that in cases of sale the owner parts with the whole proprietary interest in the thing, and in cases of hire the owner parts with it only for a temporary use and purpose. In a sale, the thing itself is the object of the contract; in hiring, the use of the thing is its object; Vinnius, lib. 3, tit. 25, *in pr.*; Pothier, Louage, nn. 2–4; Jones, Bailm. 86; Story, Bailm. § 371. See BAILMENT; Edwards, Jones, Story, Schouler, Bailments; Parsons, Story, Contracts; 2 Kent, 456.

HIRER. He who hires. See BAILMENT.

HIS EXCELLENCY. A title given by the constitution of Massachusetts to the governor of that commonwealth. Mass. Const. part 2, c. 2, s. 1, art. 1. This title is customarily given to the governors of the other states, whether or not it be the official designation in their constitutions and laws.

HIS HONOR. A title given by the constitution of Massachusetts to the lieutenant-governor of that commonwealth. Mass. Const. part 2, c. 2, s. 2, art 1. It is also customarily given to some inferior magistrates, as the mayor of a city.

HLAFORDSWICE (Sax. *hlaford*, lord, literally bread-giver, and *wice*). **In Old English Law.** Betraying one's lord; treason. Crabb, Hist. Eng. Law, 59, 301.

HLOTHBOTE (Sax. *hloth*, company, and *bote*, compensation). **In Old English Law.** Fine for presence at an illegal assembly. Du Cange, *Hlotbota.*

HOCK-TUESDAY MONEY.

A duty given to the landlord, that his tenants and bondmen might solemnize the day on which the English mastered the Danes, being the second Tuesday after Easter week. Cowel.

HODGE-PODGE ACT. A name given to a legislative act which embraces many subjects. Such acts, besides being evident proofs of the ignorance of the makers of them, or of their want of good faith, are calculated to create a confusion which is highly prejudicial to the interests of justice. Instances of this wretched legislation are everywhere to be found. See Barrington, Stat. 449. In Pennsylvania, and in other states, bills, except general appropriation bills, can contain but one subject, which must be expressed in the title. Const. of Penn. art. 3, sec. 3.

HOG. This word may include a sow. 2 S. C. 21; and may refer to the dead as well as the living animal; 7 Ind. 195.

HOGHENHYNE (from Sax. *hogh*, house, and *hine*, servant). A domestic servant. Among the Saxons, a stranger guest was, the first night of his stay, called *uncuth*, or unknown; the second, *gust*, guest; the third, *hoghenhyne;* and the entertainer was responsible for his acts as for those of his own servant. Bracton, 124 *b*; Du Cange, *Agenhine;* Spelman, Gloss. *Homehine.*

HOGSHEAD. A liquid measure, containing half a pipe; the fourth part of a tun, or sixty-three gallons.

HOLD. A technical word in a deed introducing with "to have" the clause which

expresses the tenure by which the grantee is to have the land. The clause which commences with these words is called the *tenendum*. See TENENDUM; HABENDUM. For the distinction between the power to hold and the power to purchase, see 7 S. & R. 313; 14 Pet. 122.

To decide, to adjudge, to decree: as, the court in that case *held* that the husband was not liable for the contract of the wife, made without his express or implied authority.

To bind under a contract: as, the obligor is *held* and firmly bound.

In the constitution of the United States it is provided that no person *held* to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on the claim of the party to whom such service or labor may be due. Art. iv. sec. ii. § 3. The main purpose of this provision in the constitution no longer exists, through the abolition of slavery; but it includes apprentices; 1 Am. L. Reg. 654. See FUGITIVE SLAVE.

HOLD PLEAS. To hear or try causes. 3 Bla. Com. 35, 298.

HOLDER. The holder of a bill of exchange is the person who is legally in the possession of it, either by indorsement or delivery, or both, and entitled to receive payment either from the drawee or acceptor, and is considered as an assignee. 4 Dall. 53. And one who indorses a promissory note for collection, as an agent, will be considered the holder for the purpose of transmitting notices; 20 Johns. 372; 2 Hall, N. Y. 112; 6 How. 248. No one but the holder can maintain an action on a bill of exchange; Byles, Bills, 2. See BILL OF EXCHANGE.

HOLDING OVER. The act of keeping possession by the tenant, without the consent of the landlord, of premises which the latter, or those under whom he claims, had leased to the former, after the term has expired.

When a proper notice has been given, this injury is remedied by ejectment, or, under local regulations, by summary proceedings. See 2 Yeates, 523; 2 S. & R. 50, 486; 8 *id.* 459; 1 Binn. 334, n.; 4 Rawle, 123; 2 Bla. Com. 150; 3 *id.* 210; FORCIBLE ENTRY AND DETAINER. The term is also applied to the retaining possession of a public office by an incumbent, after his term has expired, which is not always unlawful, as such action is sometimes authorized by statute or common law, to prevent an interregnum.

HOLIDAY. A religious festival; a day set apart for commemorating some important event in history; a day of exemption from labor. Webster, Dict. (Webster applies *holyday* especially to a religious, *holiday* to a secular festival.) In England they are either by act of legislation or by ancient usage, and are now regulated by the Bank Holiday Act of 1871, extended by the act 38 Vict. c. 13. Fasts and thanksgiving days are also occasionally appointed by the crown. See Wharton, Dict.; 2 Burn, Eccl. Law, 308 *et seq.* In the United States the matter of holidays is generally regulated by statutes or local usage. Sunday and the 4th of July are observed throughout the United States. A thanksgiving day and a fast day are appointed each year by the governors of many of the states.

The president recommends an annual thanksgiving day, usually the fourth Thursday in November, and in most if not all of the states, the governors confirm this appointment by proclamation. In addition to those above mentioned, the following are commonly observed as holidays: New Year's Day; Washington's Birthday, Feb. 22; Decoration Day, May 30; Christmas Day, and general election days. When one of these days falls on a Sunday, the following Monday is observed as a holiday, but bills, notes, and checks must be presented, protested, etc., the preceding Saturday. A *legal* holiday is, *ex vi termini, dies non juridicus* (*q. v.*), 38 Wis. 673.

HOLOGRAFO. In Spanish Law. Olographi. A term applicable to the paper, document, disposition, and more particularly to the last will of a person, which in order to be valid must be wholly written, signed, and dated by the testator. "*Holographum, apud Testum, appellatur testamentum, quod totum manu testatoris scriptum est et subsignatum.*"

HOLOGRAPH. What is written with one's own hand. See OLOGRAPH.

HOLY ORDERS. In Ecclesiastical Law. The orders or dignities of the church. Those within holy orders are archbishops, bishops, priests, and deacons. The form of ordination must be according to the form in the book of Common Prayer. Besides these orders, the church of Rome had five others, viz.: subdeacons, acolytes, exorcists, readers, and ostiaries. 2 Burn, Eccl. Law, 39, 40.

HOMAGE (anciently *hominium*, from *homo*). A mere acknowledgment of tenure made by a tenant by knight-service upon investiture, in the following form:—

The tenant in fee or fee-taile that holds by homage shall kneel upon both his knees, ungirded, and the lord shall sit and hold both the hands of his tenant between his hands, and the tenant shall say, "I become your man (*homo*) from this day forward of life, and member, of earthly honor, and to you shall be faithful and true, and shall bear to you faith for the lands that I claim to hold of you, saving that faith that I owe to our lord the king;" and then the lord so sitting shall kiss him. The kiss is indispensable (except sometimes in the case of a woman. Du Cange). After this the oath of fealty is taken; but this may be taken by the stewart, homage only by the lord. Termes de la Ley. This species of homage was called *homagium planum* or *simplex*, 1 Bla. Com. 367, to distinguish it from *homagium ligium*, or liege homage, which included fealty and the services incident. Du Cange; Spelman, Gloss.

Liege homage was that homage in which allegiance was sworn without any reservation, and was, therefore, due only to the sovereign; and, as it came in time to be exacted without

any actual holding from him, it sunk into the oath of allegiance. Termes de la Ley.

The obligation of homage is mutual, binding the lord to protection of the vassal, as well as the vassal to fidelity. Fleta, lib. 3, c. 16.

HOMAGE ANCESTRAL. Homage was so called where time out of mind a man and his ancestors had held by homage; and in this case the lord who had received the homage was bound to acquit the tenant of all services to superior lords, and, if vouched, to warrant his title. If the tenant by homage ancestral aliened in fee, his alienee held by homage, but not by homage ancestral. Termes de la Ley; 2 Bla. Com. 300.

HOMAGE JURY. The jury of a lord's court, or court baron: so called because generally composed of those who owed homage to the lord, or the *pares curiæ*. Kitchen; 2 Bla. Com. 54, 366.

HOMAGER. One that is bound to do homage to another. Jacob, Law Dict.

HOMBRE BUENO. In Spanish Law. The ordinary judge of a district.

Hence, when the law declares that a contract, or some other act, is to be conformable to the will of the *hombre bueno*, it means that it is to be decided by the ordinary judge. Las Partidas, 7. 34. 31.

In matters of conciliation, it applies to the two persons, one chosen by each party, to assist the constitutional alcalde in forming his judgment of reconciliation. Art. 1, chap. 3, decree of 9th October, 1812.

Arbitrators chosen by litigants to determine their differences.

Persons competent to give testimony in a cause. L. 1. t. 8. b. 2, *Fuero Real.*

HOME PORT. The port where the owner of a ship resides.

HOMESTALL. The mansion-house.

HOMESTEAD. The home place—the place where the home is. It is the home—the house and the adjoining land—where the head of the family dwells—the home farm; 36 N. H. 166.

The term necessarily includes the idea of a residence; 24 Tex. 224. It must be the owner's place of residence—the place where he lives; 23 Tex. 502.

The homestead laws of various states are constitutional or statutory provisions for the exemption of a certain amount or value of real estate occupied by a debtor as his homestead from a forced sale for the payment of his debts. In some cases restraints are placed upon the alienation by the owner of his property and in some cases the exempt property, upon the death of the owner, descends to the widow and minor children, free from liability for his debts. They are of a comparatively recent origin; 51 N. H. 261: but are now said to exist in all but seven states; Thomp. Hom. & Ex. p. v. Their policy has been eulogized in many decided cases. See 4 Cal. 26; 1 Iowa, 439; 18 Tex. 415; Thomp. Hom. & Ex. § 1.

Homestead acts have generally received a liberal construction; 45 Miss. 182; 36 Vt. 271; 46 N. H. 43; *contra*, 28 La. An. 594, 665; 3 Minn. 53. They cannot be considered as in derogation of the common law, inasmuch as, at common law, real estate was not liable to execution for the payment of debts; Thomp. Hom. & Ex. § 4; but see 16 Minn. 161; and see 7 Mich. 501; 3 Iowa, 287.

In some states there is a money limit put to the homestead; in others a limit of the quantity of land exempted. The value, under the statute, is the value at the time the homestead is designated; 42 Tex. 199; *contra*, 37 Cal. 180. The courts cannot exempt money instead of land; 7 Mich. 500; but see 37 Cal. 180, when it was held that if the homestead exceeded the constitutional limit of value, and enough of it could not be separated and subjected to execution to reduce the value to that limit, the property would be sold and the constitutional amount set apart to the debtor. In 60 Mo. 308, it was held that the law confers a homestead right only in land and not in the proceeds of the sale of land.

The owner of an undivided interest in land is not entitled to a homestead exemption therein; 3 Lea, 76; 30 La. An. 1130 (*contra*, 55 Miss. 89); so where land is held by the parties as partners; 5 Sawy. 843. A learned author gives as the conclusive test of a homestead—"that the *form*, *physical characteristics*, and *geography* of the premises must be such as, when taken in connection with their *use* by the owner, and their *value* when the statute creates a limit as to value, will convey notice to persons of ordinary prudence who deal with him that they are his homestead." Thomp. Hom. & Ex. § 104, citing 21 Wall. 481, 42 Tex. 195, 44 *id.* 597, as sustaining this doctrine.

"The courts have generally held that the mere fact that the debtor carries on his business upon his homestead premises or rents out a portion thereof, as in case of one who keeps a country tavern; 16 Cal. 181; or uses the lower part of his dwelling for business purposes; 22 Mich. 260; or who living in town, keeps boarders and lodgers; 1 Nev. 607; or one who lets rooms in his dwelling to tenants; 11 Allen, 194; or who rents out part for a store and uses another part for a printing office; 10 Minn. 154; does not deprive it of its homestead character." Thomp. Hom. & Ex. § 120. A store; 58 Ill. 425; or mill; 2 Woods, 657 (*per* Bradley, J.); situated on the homestead lot; a smithshop separated from it by a highway; 42 Vt. 27; a brewery in which the debtor lives with his family; 2 Dill. 339; and a lawyer's office in a separate block; 19 Tex. 371; have been included within the rule. But in Iowa a different tendency prevails; thus a building occupied at once for a dwelling and for business purposes may be divided horizontally and the business part sold in execution; 4 Iowa, 368; but see, *contra*, Thomp. Hom. & Ex. § 134, n.; 9 Wis. 70; "and in other states a homestead cannot be reserved in tenements and separate buildings occupied by tenements, although upon the enclosure

whereon is situated the debtor's dwelling;" Thomp. Hom. & Ex. § 120; 36 N. H. 158; 33 Cal. 220; 16 Wis. 114.

In Illinois it is said that the homestead laws are not to be taken only to save a mere shelter for the debtor and his family, but to give him the full enjoyment of the entire lot of ground exempted, to be used either in the cultivation of it, or in the erection and use of buildings on it, either for his own business or for deriving income in the way of rent; 74 Ill. 206.

There is a conflict of decision as to whether a tract of land detached from the one on which the homestead dwelling-house is built, but used by the debtor in connection with it, is exempt. The opinion supported by the weight of authority is that it is not; Thomp. Hom. & Ex. § 145; 36 Iowa, 394; 15 Minn. 116; 16 Gray, 146; 15 Wis. 635; *contra*, 69 N. C. 289; 33 Tex. 212; 62 Mo. 498; 56 Miss. 30.

A homestead law, so far as it attempts to withdraw from the reach of creditors property which would have been within their reach under the laws in force at the time the debt was contracted, is unconstitutional; 15 Wall. 610, reversing S. C. 44 Ga. 353; 6 Baxt. 225.

Provisions exist in most of the states forbidding the alienation of the property designated as a homestead, except when the deed is joined in by the wife. In others the payment of purchase money can be secured by a mortgage; so may the payment of purchase money and money borrowed for improvements on the property. Where the existence of a homestead is made to depend upon a selection by the debtor, the latter may alien the property at any time prior to such selection, by the usual formalities; 2 Mich. 465. The purchaser in good faith of a homestead succeeds to the debtor's rights and will be protected against his creditors; 11 Ill. App. 27.

Homesteads may be designated by one of three ways:—1, by a public notice of record; 2, by visible occupancy and use; 3, by the actual setting apart of the homestead under the direction of a court of justice; Thomp. Hom. & Ex. § 230. Statutory provisions, if they exist, must be followed. In the absence of a statutory provision, filing a declaration of intention to designate a certain property as a homestead has no legal effect; 4 Cal. 23. As to the designation of a homestead by occupancy, "it may be laid down as the prevalent doctrine that actual residence by the *head of the family* prior to the contraction of the debt, etc., he occupying it as a home and with the intention of dedicating it to the uses of a residence for his family, will be sufficient to impress upon the premises so occupied the character of a homestead." Thomp. Hom. & Ex. § 260. This designation will be sufficient to preserve the homestead character for the benefit of the widow and minor children; 29 Ark. 280. In order to give the character of a homestead, the purchase must always be with the intent of present, and not simply future, occupancy; 21 Kan. 533. Actual occupancy is necessary; 47 Iowa, 414.

The right of exemption is lost by the unequivocal abandonment of the homestead by the owner, with the intention of no longer treating it as his place of residence; Thomp. Hom. & Ex. § 263, citing 37 Tex. 572; 4 N. H. 51. A lease of land for more than a year, and a residence elsewhere, was held to forfeit the homestead; 59 Ala. 566.

Every person who is the head of a family, or is over 21 years of age and is a citizen, or has declared his intention to become such, also soldiers, seamen, and members of the marine corps, including officers, who have served in the rebellion for ninety days, and remained loyal to the government, may take up a quarter section or less of unappropriated public lands, as a homestead; R. S. § 2289 *et seq.*

This right of exemption depends upon the construction of a large number of statutes in various states. The decisions are, therefore, far from harmonious. The subject has been fully and very ably treated in Judge Thompson's work frequently cited above. See also 36 Am. Rep. 728; 10 Am. L. Reg. N. S. 1, 137; *id.* 641, 705 (by Judge Dillon). See FAMILY; HEAD OF FAMILY; EXEMPTION; MANOR; MANSION.

HOMICIDE (Lat. *homo*, a man, *cedere*, to kill). The killing any human creature. 4 Bla. Com. 177.

Excusable homicide is that which takes place under such circumstances of accident or necessity that the party cannot strictly be said to have committed the act wilfully and intentionally, and whereby he is relieved from the penalty annexed to the commission of a felonious homicide.

Felonious homicide is that committed wilfully under such circumstances as to render it punishable.

Justifiable homicide is that committed with full intent, but under such circumstances of duty as to render the act one proper to be performed.

According to Blackstone, 4 Com. 177, homicide is the killing of any human creature. This is the most extensive sense of this word, in which the intention is not considered. But in a more limited sense, it is always understood that the killing is by human agency; and Hawkins defines it to be the killing of a man by a man; 1 Hawk. Pl. Cr. c. 8, §. 2. See Dalloz, Dict.; 5 Cush. 303. Homicide may perhaps be described to be the destruction of the life of one human being, either by himself or by the act, procurement, or culpable omission of another. When the death has been intentionally caused by the deceased himself, the offender is called *felo de se;* when it is caused by another, it is justifiable, excusable, or felonious.

The distinction between justifiable and excusable homicide is that in the former the killing takes place without any manner of fault on the part of the slayer; in the latter there is some slight fault, or at any rate the absence of any duty rendering the act a proper one to be performed, although the blame is so slight as not to render the party punishable. The distinction is very frequently disregarded, and would seem to be of little practical utility; See 2 Bish. Cr. Law, §§ 617 *et seq.* But between justifiable or excusable and felonious homicide the distinction, it will be evident, is of great importance. 1 East,

Pl. Cr. 260, gives the following example: "If a person driving a carriage happen to kill another, if he saw or had timely notice of the mischief likely to ensue, and yet wilfully drove on, it will be *murder;* if he might have seen the danger, but did not look before him, it will be *manslaughter;* but if the accident happened in such a manner that no want of due care could be imputed to the driver, it will be accidental death and excusable homicide." See 4 Bla. Com. 176–204; Rosc. Cr. Ev. 580.

There must be a person in actual existence; 6 C. & P. 349; 7 *id.* 814, 850; 9 *id.* 25; but the destruction of human life at any period after birth is homicide, however near it may be to extinction from any other cause. 2 C. & K. 784; 2 Bish. Cr. Law, § 632. The person killed, to constitute the homicide felonious, must have been entitled to his existence. Thus, a soldier of the enemy in time of war has no right to his life, but may be killed. A criminal sentenced to be hanged has no right to his life; but no person can take it but the authorized officer, in the prescribed manner. See MURDER; MANSLAUGHTER; SELF-DEFENCE.

HOMINE CAPTO IN WITHERNAM. See DE HOMINE CAPTO IN WITHERNAM.

HOMINE ELIGENDO (Lat.). **In English Law.** A writ directed to a corporation, requiring the members to make choice of a new man, to keep the one part of a seal appointed for statutes merchant. Tech. Dict.

HOMINE REPLEGIANDO. Se DE HOMINE REPLEGIANDO.

HOMO (Lat.). A human being, whether male or female. Co. 2d Inst. 45.

In Feudal Law. A vassal; one who, having received a feud, is bound to do homage and military service for his land: variously called *vassalus, vassus, miles, cliens feudalis, tenens per servitium militare,* sometimes *baro,* and most frequently *leudes.* Spelman, Gloss. *Homo* is sometimes also used for a tenant by socage, and sometimes for any dependent. A *homo* claimed the privilege of having his cause and person tried only in the court of his lord. Kennett, Paroch. Antiq. p. 152.

HOMOLOGACION. In Spanish Law. The tacit consent and approval, inferred by law from the omission of the parties, for the space of ten days, to complain of the sentences of arbitrators, appointment of syndics, or assignees, of insolvents, settlements of successions, etc. Also, the approval given by the judge of certain acts and agreements for the purpose of rendering them more binding and executory. Escriche.

HOMOLOGATION. In Civil Law. Approbation; confirmation by a court of justice; a judgment which orders the execution of some act: as, the approbation of an award and ordering execution on the same. Merlin, Répert.; La. Civ. Code; Dig. 4. 8; 7 Toullier, n. 224. To homologate is to say the like, *similiter dicere.* 9 Mart. La. 324.

In Scotch Law. An act by which a person approves a deed, so as to make it binding on him, though in itself defective. Erskine, Inst. 3. 3. 47 *et seq.;* 2 Bligh, 197; 1 Bell, Com. 144.

HONOR. In English Law. The seigniory of a lord paramount. 2 Bla. Com. 91.

In Common Law. To accept a bill of exchange; to pay a bill accepted, or a promissory note, on the day it becomes due. 7 Taunt. 164; 1 Term, 172.

HONORARIUM. Something given in gratitude for services rendered.

It is so far of the nature of a gift that it cannot be sued for; 5 S. & R. 412; 1 Chitt. Bailm. 38; 2 Atk. 332; 3 Bla. Com. 28. Of this character were formerly, in England, the fees of barristers and of physicians. The same rule once prevailed in Pennsylvania, but was afterwards rejected; 19 Penn. 95; and now prevails in New Jersey; 3 Green, 35; and to some extent in the federal courts, as applied to counsel in the special sense of the term; Weeks, Atty. 548; 2 Cra. C. C. 144. In many states the contrary rule has been expressly laid down; 10 Tex. 81; 6 Fla. 214; 14 Mo. 54; 26 Wend. 452 (a full discussion by Walworth, C.); 1 Pick. 415. The payment of the fees of English solicitors, attorneys, and proctors is provided for by statute and rules of court; see Weeks, Atty. 536 *et seq.* See 3 Sharsw Bla. Com. 28.

HONORARY SERVICES. Services by which lands in grand serjeantry were held: such as, to hold king's banner, or to hold his head in the ship which carried him from Dover to Whitsand, etc. 2 Sharsw. Bla. Com. 73, and note.

HORÆ JUDICIÆ. (Lat.). Hours judicial, or those in which judges sit in court. In Fortesque's time, these were from 8 to 11 A. M., and the courts of law were not open in the afternoon. Co. Litt. 135 *a;* Co. 2d Inst. 246; Fortesque, 51, p. 120, note.

HORN TENURE. Tenure by winding a horn on approach of enemy, called tenure by *cornage.* If lands were held by this tenure of the king, it was grand serjeantry; if of a private person, knight-service. Many anciently so held their lands towards the Picts' Wall. Co. Litt. § 156; Camd. Britan. 609.

HORNING. In Scotch Law. A process issuing on a decree of court of sessions, or of an inferior court, by which the debtor is charged to perform, in terms of his obligation, or on failure made liable to *caption,* that is, imprisonment. Bell, Dict. *Horning, Letters of; Diligence.* The name comes from the ancient custom of proclaiming letters of horning not obeyed, and declaring the recusant a rebel, with three blasts of a horn, called putting him to the horn. 1 Ross, Lect. 258, 308.

HORS DE SON FEE Fr. (out of his fee).

In Old English Law. A plea to an action brought by one who claimed to be lord for rent-services as issuing out of his land, by

which the defendant asserted that the land in question was out of the fee of the demandant; 9 Co. 30; 2 Mod. 104.

HORSE. Until a horse has attained the age of four years, he is called a colt; 1 Russ. & R. 416. This word is sometimes used as a generic name for all animals of the horse kind; 44 Ga. 263; 3 Brev. 9. See Yelv. 67 *a*.

It is also used to include every description of the male, as gelding or stallion, in contradistinction to the female; 38 Tex. 555. In a statute giving a remedy against railroad companies for injuries to horses and cattle, it includes mules; 50 Ill. 184. The exemption of a horse from execution has been held to include whatever is essential to his enjoyment, as shoes and saddle; 21 Tex. 449.

HOSPITATOR (Lat.). A host or entertainer.

Hospitator communis. An innkeeper. 8 Co. 32.

Hospitator magnus. The marshal of a camp.

HOSTAGE. A person delivered into the possession of a public enemy in the time of war, as a security for the performance of a contract entered into between the belligerents.

Hostages were frequently given as a security for the payment of a ransom-bill; and if they died their death did not discharge the contract; 3 Burr. 1734; 1 Kent, 106; Dane, Abr. Index.

HOSTELER. An innkeeper. Now applied, under the form ostler, to those who look to a guest's horses. Cowel.

HOSTELLAGIUM. In English Law. A righ reserved to the lords to be lodged and entertained in the houses of their tenants.

HOSTILITY. A state of open enmity; open war. Wolff, Droit de la Nat. § 1191.

Permanent hostility exists when the individual is a citizen or subject of the government at war.

Temporary hostility exists when the individual happens to be domiciliated or resident in the country of one of the belligerents: in this latter case the individual may throw off the national character he has thus acquired by residence, when he puts himself in motion, *bona fide*, to quit the country *sine animo revertendi;* 3 C. Rob. 12; 3 Wheat. 14. See ENEMY; DOMICIL.

HOTCHPOT (spelled, also, *hodge-podge*, *hotch-potch*). The blending and mixing property belonging to different persons, in order to divide it equally. 2 Bla. Com. 190.

The bringing together all the personal estate of the deceased, with the advancements he has made to his children, in order that the same may be divided agreeably to the provisions of the statute for the distribution of intestates' estates.

In bringing an advancement into hotchpot, the donee is not required to account for the profits of the thing given: for example, he is not required to bring into hotchpot the produce of negroes, nor the interest of money. The property must be accounted for at its value when given; 1 Wash. Va. 224; 17 Mass. 358; 3 Pick. 450; 2 Des. 127; 3 Rand. 117, 559. See ADVANCEMENT.

HOUR. The twenty-fourth part of a natural day; the space of sixty minutes of time. Co. Litt. 135.

HOUSE. A place for the habitation and dwelling of man.

A collection of persons; an institution; a commercial firm; a family.

In a grant or demise of a house, the curtilage and garden will pass, even without the words "with the appurtenances" being added; Cro. Eliz. 89; 3 Leon. 214; 1 Plowd. 171; 2 Wms. Saund. 401, n. 2; 4 Penn. 93. In a grant or demise of a house with the appurtenances, no more will pass although other lands have been occupied with the house; 1 P. Wms. 603; Cro. Jac. 526; 2 Co. 32; Co. Litt. 5 *d*, 36 *a*, *b*; 2 Wms. Saund. 401, n. 2.

If a house, originally entire, be divided into several apartments, with an outer door to each apartment, and no communication with each other subsists, in such case the several apartments are considered as distinct houses; 6 Mod. 214; Woodfall, L. & T. 178.

As to what the term includes in cases of arson and burglary, see ARSON; BURGLARY; DWELLING-HOUSE. See, also, ARREST.

HOUSE OF COMMONS. One of the constituent houses of the English parliament.

It is composed of the representatives of the people, as distinguished from the house of lords, which is composed of the nobility. It consists (1881) of six hundred and fifty-two members: four hundred and eighty-nine from England and Wales, sixty from Scotland, and one hundred and three from Ireland. See PARLIAMENT; HIGH COURT OF PARLIAMENT.

HOUSE OF CORRECTION. A place for the imprisonment of those who have committed crimes of lesser magnitude.

HOUSE OF ILL FAME. In Criminal Law. A house resorted to for the purpose of prostitution and lewdness. 5 Ired. 603.

Keeping a house of ill fame is an offence at common law; 3 Pick. 26; 17 *id.* 80; 1 Russ. Cr. 322. So the letting of a house to a woman of ill fame, knowing her to be such, with the intent that it shall be used for purposes of prostitution, is an indictable offence at common law; 3 Pick. 26; 11 Cush. 600. If a lodger lets her room for the purpose of indiscriminate prostitution, she is guilty of keeping a house of ill fame, as much as if she were the proprietor of the whole house; 2 Raym. 1197. A married woman who lives apart from her husband may be indicted alone, and punished, for keeping a house of ill fame; 1 Metc. Mass. 151. See 11 Mo. 27; 10 Mod. 63. The house need not be kept for lucre, to constitute the offence; 21 N. H. 345; 2 Gray, 357; 18 Vt. 70. See 17 Pick. 80. See, also, 17 Conn. 467; 4 Cra.

C. C. 338, 372; 6 Gill, 425; 4 Iowa, 541; 2 B. Monr. 417.

HOUSE OF LORDS. One of the constituent houses of the English parliament.

It is at present (1881) composed of twenty-six lords spiritual (bishops and archbishops), and four hundred and eighty-six lords temporal; but the number is liable to vary.

This body was the supreme court of judicature in the kingdom. It had no original jurisdiction (except to a certain extent before the reign of Charles II.), but was the court of appeal in the last resort, with a few exceptions and under some limitations as to the right, from the inferior courts upon appeal or writ of error for mistakes of law. Appeals lay to this tribunal from Scotch and Irish courts, in some cases. See stat. 4 Geo. IV. c. 85, as to Scotch, and stat. 39 & 40 Geo. III. c. 67, art. 8, as to Irish, appeals.

This body, when sitting as a court of law, was presided over by the lord chancellor, whose attendance alone was in any respect compulsory, and was composed of as many of its members who had filled judicial stations as chose to attend. Three laymen also attended in rotation, but did not vote upon judicial matters; 11 Cl. & F. 421. In the absence of the chancellor, deputy speakers, who were members of the profession but not of the house, have been appointed; 3 Bla. Com. 56.

By statute 39 & 40 Vict. ch. 59, an appeal, by petition, lies to the House of Lords from the Court of Appeal in England and from Scotch and Irish courts from which an appeal or writ of error formerly lay to the House of Lords. The appeal is heard by the Lord Chancellor, two Lords of Appeal in Ordinary (whose appointment is provided for by the act), and such peers as are holders of or have held certain high judicial offices.

It sits also to try impeachments. See IMPEACHMENT; HIGH COURT OF PARLIAMENT; PARLIAMENT.

HOUSE OF REFUGE. A prison for juvenile delinquents.

HOUSE OF REPRESENTATIVES. The name given to the more numerous branch of the federal congress, and of the legislatures of several of the states of the United States. See the articles upon the various states.

The constitution of the United States, art. I. s. 2, § 1, provides that the "house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors of each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature." No person can be a representative, until he has attained the age of twenty-five and has been seven years a citizen of the United States, and unless he is at the time of his election an inhabitant of the state in which he is chosen; U. S. Const. art. I. sec. 2, § 2. A representative cannot hold any office under the United States; art. I. s. 6, § 2; nor can any religious test be required of him; art. VI. § 3; nor is any property qualification imposed upon him. Representatives are apportioned (Amend. XIV. sec. 2) among the several states according to their respective numbers, excluding Indians not taxed; with a proviso, that, if the right to vote for state or U. S. officers is denied to any male inhabitants of a state, of 21 years of age and citizens of the United States, except for participation in rebellion or other crime, the representation in such state shall be proportionately reduced. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; U. S. Const. art. I. sec. 1. A re-apportionment among the states is made every tenth year; under the act of 1882, founded upon the census of 1880, the house consists of 325 members, and representation is counted upon a basis of 151,911. The house of representatives has the exclusive right of originating bills for raising revenues, but the senate may concur with amendments, U. S. Const. art. I. sec. 7. See CONGRESS.

HOUSE-BOTE. An allowance of necessary timber out of the landlord's woods for the repairing and support of a house or tenement. This belongs of common right to any lessee for years or for life. House-bote is said to be of two kinds, *estoveriam œdificandi et ardendi*. Co. Litt. 41.

HOUSEBREAKING. In Criminal Law. The breaking and entering the dwelling house of another by night or by day, with intent to commit some felony within the same, whether such felonious intent is executed or not. Housebreaking by night is burglary.

This crime is of a local character, and the evidence respecting the place must correspond with the allegation in the indictment.

HOUSEHOLD. Those who dwell under the same roof, and constitute a family. Webst. But it is not necessary that they should be under a roof, or that the father of the family be with it, if the mother and children keep together so as to constitute a family; 18 Johns. 402.

Belonging to the house and family; domestic. Webster, Dic.

HOUSEHOLD FURNITURE. By this expression, in wills, all personal chattels will pass that may contribute to the use or convenience of the household or the ornament of the house: as, plate, linen, china, both useful and ornamental, and pictures. But goods or plate in the hands of testator in the way of his trade will not pass, nor books, nor wines; 1 Jarm. Wills, 591, 596, notes; 1 Ves. Sen. 97; 2 Will. Ex. 1017; 1 Johns. Ch. 329.

But books and wines have been held, on the other hand, to pass in a bequest, where the testator had made them part of the household furniture by his use of them; 1 Robt. 21; see 2 Am. L. Reg. N. S. 489; 33 Me. 535; 60 Penn. 220.

HOUSEHOLD GOODS. In wills. This expression will pass every thing of a permanent nature (that is, articles of household which are not consumed in their enjoyment) that were used or purchased, or otherwise

acquired by the testator, for his house, but not goods in the way of his trade. Plate will pass by this term, but not articles of consumption found in the house, as malt, hops, or victuals, nor guns and pistols, if used in hunting or sport, and not for defence of house. A clock in the house, if not fixed to it, will pass; 1 Jarm. Wills, 589; 1 Rop. Leg. 253.

HOUSEHOLD STUFF. Words sometimes used in a will. Plate will pass under the term; 2 Freem. 64; but not apparel, books, cattle, victuals, and choses in action, which do not fall within the natural meaning of the word, unless there be an intention manifest that they should pass; 15 Ves. 319. Goods, as seven hundred beds in possession of testator for purposes of trade, do not pass under the term "utensils of household stuff;" 2 P. Wms. 302. In general, "household stuff" will pass all articles which may be used for the convenience of the house; Swinb. Wills, pt. 7, § 10, p. 484.

HOUSEHOLDER. Master or chief of a family; one who keeps house with his family; Webst. But a man who has absconded from the state, and left his wife and children remaining together as a family, was for their benefit held to be a householder; 18 Johns. 402; 19 Wend. 475.

A keeper of a tavern or boarding-house, or a master or mistress of a dwelling-house; 11 N. Y. Leg. Obs. 248; 1 Supplem. to Rev. Stat. Mass. 1836–1853, Index. p. 170. A person having and providing for a household. The character is not lost by a temporary cessation from housekeeping; 14 Barb. 456; 19 Wend. 475; 51 How. Pr. 45. For purposes of bail, one who rents and occupies part of a building as an office has been held a householder; 33 How. Pr. 323. See 3 Code R. 17; 37 Ala. 106; 52 *id.* 161.

HOUSEKEEPER. One who occupies a house.

A person who, under a lease, occupies every room in the house except one, which is reserved for his landlord, who pays all the taxes, is not a housekeeper; 1 Chitty, Bail. 502. Nor is a person a housekeeper who takes a house which he afterwards underlets to another, whom the landlord refuses to accept as his tenant: in this case the undertenant paid the taxes, and let to the tenant the first floor of the house, and the rent was paid for the whole house to the tenant, who paid it to the landlord. *Id.* note.

In order to make the party a housekeeper, he must be in actual possession of the house; 1 Chitty, Bail. 288; and must occupy a whole house. See 1 B. & C. 178; 2 Term, 406; 3 Petersd. Abr. 103, note; 2 Mart. La. 313. See HOUSEHOLDER.

HOVEL. A place used by husbandmen to set their ploughs, carts, and other farming utensils, out of the rain and sun; Law Lat. Dict. A shed; a cottage; a mean house.

HOYMAN. The master or captain of a hoy.

Hoymen are liable as common carriers; Story, Bailm. § 496.

HUDE-GELD. In Old English Law. A compensation for an assault (*transgressio illata*) upon a trespassing servant (*servus*). Supposed to be a mistake or misprint in Fleta for *hinegeld*. Fleta, lib. 1, c. 47, § 20. Also, the price of one's skin, or the money paid by a servant to save himself from a whipping. Du Cange.

HUE AND CRY. In Old English Law. A pursuit of one who had committed felony, by the highway.

The meaning of hue is said to be *shout*, from the Saxon *huer;* but this word also means *to foot*, and it may be reasonably questioned whether the term may not be *up foot and cry*, in other words, run and cry after the felon. We have a mention of hue and cry as early as Edward I.; and by the Statute of Winchester, 13 Edw. I., "immediately upon robberies and felonies committed, fresh suit shall be made from town to town, and county to county, by horsemen and footmen, to the seaside. The constable (the person being described, etc.) is to call upon the parishioners to assist him in the pursuit in his precinct; and to give notice to the next constable, who is to do the same as the first, etc. If the county will not answer the bodies of the offenders, the whole hundred shall be answerable for the robberies there committed, etc." A person engaged in the hue and cry apprehending a felon was, on the felon's conviction, entitled to forty pounds, on a certificate of the judge or justice before whom there was conviction, as well as to the felon's horse, furniture, arms, money, and other goods taken with him, subject to the rights of other persons therein; Wood, Int. 370–373. See 2 Hale, Pl. Cr. 100.

HUEBRA. In Spanish Law. An acre of land, or as much as can be ploughed in a day by two oxen; 2 White, Recop. 49.

HUISSIER. An usher of the court. An officer who serves process.

In France, an officer of this name performs many of the duties of an English sheriff or constable. In Canada there may be many huissiers in each county, whose acts are independent of each other, while there can be but one sheriff, who is presumed cognizant of the acts of his subordinates. The French huissier certifies his process; the Canadian merely serves what is put into his hands.

HUNDRED. In English Law. A division of a county, which some make to have originally consisted of one hundred hides of land, others of ten *tithings*, or one hundred free families.

It differed in size in different parts of England; 1 Steph. Com. 122. In many cases, when an offence is committed within a hundred, the inhabitants are liable to make good the damage if they do not produce the offender. See 12 East, 244.

This system was probably introduced by Alfred (though mentioned in the Pœnitentiæ of Egbert, where it seems to be the addition of a later age), being borrowed from the continent, where it was known to the Franks, under the name *centena*, in the sixth century. See Charlemagne Capit. l. 3, c. 10.

It had a court attached to it, called the hundred court, or hundred lagh, like a court baron, except in its larger territorial jurisdiction. It was governed by the hundredary (*hundredarius*); 9 Co. 25. The jurisdiction of this court has devolved upon the county courts. Jacob, Law Dict.; Du Cange. Hundred-penny was a tax collected from the hundred by its lord or by the sheriff. Hundred-setena signified the dwellers in the hundred; Charta Edg. Reg. Mon. Angl. to. 1, p. 16.

HUNDRED COURT. An inferior court, long obsolete, and practically abolished by the County Courts Act of 1867, sec. 28, whose jurisdiction extended to the whole territory embraced in a hundred. They were courts not of record; the freeholders were the judges; they were held before the steward of the manor as register; and they resembled courts baron in all respects except in their territorial jurisdiction; 3 Bla. Com. 34, 35.

HUNDRED GEMOTE. An assembly among the Saxons of the freeholders of a hundred.

It met twelve times in the year, originally; though subsequently its meetings became less frequent.

It had an extensive jurisdiction, both civil and criminal, and was the predecessor of the county court and sheriff's tourn, and possessed very similar powers; Spelman, Gloss. *Hundredum;* 1 Reeve, Hist. Eng. Law, 7.

HUNDRED LAGH (Sax.). Liability to attend the hundred court; Spelman, Gloss. See Cowel; Blount.

HUNDREDARY (*hundredarius*). The chief magistrate of a hundred; Du Cange.

HUNDREDORS. The inhabitants of a hundred, who, by several statutes, are held to be liable, in the cases therein specified, to make good the loss sustained by persons within the hundred by robbery or other violence, therein also specified. The principal of these statutes are 13 Edw. I. st. 2, c. 1, s. 4; 28 Edw. III. c. 11; 27 Eliz. c. 13; 29 Car. II. c. 7; 8 Geo. II. c. 16; 22 Geo. II. c. 24.

Persons serving on juries, or fit to be empanelled thereon, dwelling within the hundred where the land in question lies. 35 Hen. VIII. c. 6. And some such were necessarily on every panel till the 4 & 5 Anne, c. 16. 4 Steph. Com. 370. Him that had the jurisdiction of the hundred. The bailiff of the hundred. Horne, Mirr. of Just. lib. 1; Jacob, Law Dict.

HUNGER. The desire to eat. Hunger is no excuse for larceny; 1 Hale, Pl. Cr. 54; 4 Bla. Com. 31.

When a person has died, and it is suspected he has been starved to death, an examination of his body ought to be made, to ascertain whether or not he died of hunger. The signs which usually attend death from hunger are the following. The body is much emaciated, and a fetid acrid odor exhales from it, although death may have been very recent. The eyes are red and open,—which is not usual in cases of death from other causes. The tongue and throat are dry, even to aridity, and the stomach and intestines are contracted and empty. The gall-bladder is pressed with bile, and this fluid is found scattered over the stomach and intestines, so as to tinge them very extensively. The lungs are withered; but all the other organs are generally in a healthy state. The bloodvessels are usually empty; 2 Foderé, 276; 3 *id.* 231; 2 Beck, Med. Jur. 52. See Eunom. Dial. 2, § 47, pp. 142, 384, note.

HUNTING. The act of pursuing and taking wild animals; the chase.

The chase gives a kind of title by occupancy by which the hunter acquires a right or property in the game which he captures. In the United States the right of hunting is universal, and limited only so far as to exclude hunters from committing injuries to private property or to the public—as, by shooting on public roads—or from trespassing. See FERÆ NATURÆ; OCCUPANCY.

HURDLE. In English Law. A species of sledge, used to draw traitors to execution.

HUSBAND. A man who has a wife.

As to his obligations at common law. He was bound to receive his wife at his home, and to furnish her with all the necessaries and conveniences which his fortune and rank enabled him to do, and which her situation required; but this did not include such luxuries as, according to her fancy, she deemed necessaries. See CRUELTY. He was required to fulfil towards her his marital promise of fidelity, and could, therefore, have no carnal connection with any other woman, without a violation of his obligations. As he was bound to govern his house properly, he was liable for its misgovernment, and he could be punished for keeping a disorderly house even where his wife had the principal agency, and he was liable for her torts, as for her slander or trespass. He was liable also for the wife's debts incurred before coverture, provided they were recovered from him during their joint lives, and generally, for such as were contracted by her, after coverture, for necessaries, or by his authority, express or implied. For her debts contracted before coverture, a suit was required to be brought against both husband and wife. If the wife died before action brought, the husband could only be sued as her administrator, and was liable only to the extent of the assets, which he recovered in that character. He was presumptively responsible for her felonious acts, and could be indicted for felonies committed by the wife in his presence. He could, however, introduce evidence to rebut the presumption. See Reeve, Dom. Rel.; Parsons, Story, Contr.; Hill. Torts; Dwight's Introd. to Maine, Anc. Law.

Of his rights. Being the head of the family, the husband had a right to establish himself wherever he pleased, and in this he could not be controlled by his wife (see 63 Penn. 450); he could manage his affairs in his own way, buy and sell all kinds of personal property, without her control, and he might buy any real estate he might deem proper, but,

as the wife acquired a right in the latter, he could not sell it, discharged of her dower, except by her consent, expressed in the manner prescribed by the laws of the state where such lands lay. Her *personal* property in possession was vested in him, and he could dispose of it as if he had acquired it; this arose from the principle that they were considered one person in law; 2 Bla. Com. 433; and he was entitled to all her property in action, provided he reduced it to possession during her life; *id.* 434. If the wife died before the claims were collected, the husband received them as her administrator, in which case, after payment of her debts, the surplus belonged to him absolutely. He was also entitled to her *chattels real*, but these vested in him not absolutely, but *sub modo:* as, in the case of a lease for years, the husband was entitled to receive the rents and profits of it, and could, if he pleased, sell, surrender, or dispose of it during the coverture, and it was liable to be taken in execution for his debts; and, if he survived her, it was to all intents and purposes his own. In case his wife survived him, it was considered as if it had never been transferred from her, and it belonged to her alone. In his wife's freehold estate he had a life estate during the joint lives of himself and wife; and at common law, when he had a child by her who could inherit, he had an estate by the curtesy. But the rights of a husband over the wife's property are very much abridged in some of the United States, by statutes. See MARRIED WOMAN; Husb. Marr. Wom.; Bish. Mar. & D.

One of the most striking differences between the law of Louisiana and of the other states of the Union, where the common law prevails, is with regard to the relation between husband and wife. By the common law, husband and wife are considered as one person, in the language of Blackstone: "The very being or legal existence of the woman is suspended during marriage, or, at least, is incorporated or consolidated into that of the husband." By the law of Louisiana, no such consequences flow from marriage; the parties continue to be two distinct persons, whose rights of property are not necessarily affected by the relation in which they stand to each other. When the marriage is not preceded by a marriage contract, all the property, whether movable or immovable, which the parties hold, continues to belong to them, as their separate estate. But, so far as future acquisitions are concerned, the law creates a *community of acquets* or *gains* between the husband and wife during marriage; and the property thus acquired is called *common property*.

Although the wife acquires an equal interest in the acquisitions made during the marriage, yet she can exercise no control in the administration or disposition of the common property. The husband is the head and master of the community; he administers its effects, disposes of the revenues which they produce, and may alienate them by an onerous title, without the consent and permission of his wife. La. Civ. Code, art. 2373. But "he can make no conveyance *inter vivos*, by a gratuitous title, of the immovables of the community, nor of the whole or of a *quota* of the movables, unless it be for the establishment of the children of the marriage." On the dissolution of the marriage, the wife (or her heirs) may renounce the community, and thereby exonerate herself from its debts; but if she accepts, she is entitled to one-half of the property and becomes liable for one-half of the debts. The community is composed, 1, "of all of the revenues of the separate property of the husband; 2, of the revenues of the separate property of the wife, when she permits her husband to administer it; 3, of the produce of their reciprocal industry and labor; and, 4, of all property acquired by donations made jointly to the husband and wife, or by purchase, whether made in the name of the husband or wife." But donations made to them separately are the separate property of the donee. By the marriage contract, the community may be modified or entirely excluded; in the latter case the parties hold their property and its revenues as separate and distinct as if they were strangers; and both are bound to contribute to the expense of the marriage, etc. The separate property of the wife is subdivided into dotal and extra-dotal, or paraphernal. There can be no dotal property without a marriage contract; dotal property is inalienable, or *extra commercium*, during the marriage, except in a few enumerated cases. The wife may sell her paraphernal property, with the consent of her husband; and in case the husband receives the proceeds of such sales, the wife has a tacit or legal mortgage on all the immovable property of the husband, to secure the payment of the money which has thus come into his hands.

Although the wife does not lose her distinct and separate legal existence, nor her property, by her marriage, yet she becomes subject to the marital authority: hence in the *exercise* of her legal rights she requires the authorization or consent of the husband; she, therefore, cannot appear in a court of justice, either as plaintiff or defendant, without the authority of her husband; nor can she make contracts unless authorized by him; but under certain circumstances she may be authorized to sue or enter into contracts by a competent court, in opposition to the will of the husband.

One of the most important rules for the protection of the wife is that "she cannot, whether separated in property by contract or by judgment, or not separated, bind herself for her husband, nor conjointly with him, for debts contracted by him before or during the marriage." The *Senatus Consultum Vellicanum* is the original fountain of the legislation of Louisiana on the subject, and it applied to all contracts and engagements whatever; and her courts have always held that, no matter in what form a transaction might be attempted to be disguised, the wife is not bound by any promise or engagement made jointly and severally with her husband, unless the creditor can show that the consideration of the contract was for her separate advantage, and not something which the husband was bound to furnish her; 9 La. 603; 7 Mart. La. N. S. 66.

All contracts entered into during the marriage must be considered as made by the husband and for his advantage, whether made in his own name or in the name of both husband and wife. This presumption can only be destroyed by positive proof that the consideration of the contract inured to the separate advantage of the wife. The acknowledgment made by the wife in the instrument itself cannot avail the creditor; 5 La. An. 586.

HUSBRECE. Housebreaking; burglary.

HUSTINGS. In English Law. The name of a court held before the lord mayor and aldermen of London: it is the principal

and supreme court of this city. See Co. 2d Inst. 327; St. Armand, Hist. Essay on the Legisl. Power of England, 75.

The place of meeting to choose a member of parliament.

The term is used in Canadian as well as English law. Formerly the manner of conducting an election in Canada and England for a member of the legislative body was substantially as follows. Upon warrant from the proper officer, a writ issued from the clerk of the crown in chancery, directed to the sheriff, registrar, or other returning officer of the electoral division. He thereupon issued and posted in public places a proclamation appointing a day, place, and hour for his holding an election, and also fixing a day when a poll would be opened, if one were demanded and granted. The first day was called nomination day. On this day he proceeded to the hustings, which were in the open air and accessible to all the voters, proclaimed the purpose of the election, and called upon the electors present to name the person they required to represent them. The electors then made a show of hands, which might result in an election, or a poll might be demanded by a candidate or by any elector. On such demand, a poll was opened in each township, ward, or parish of the election district, at the places prescribed by statute. Now, however, by statute 35 & 36 Vict. ch. 33, the votes are given by ballot in accordance with certain fixed rules.

HYDROMETER. An instrument for measuring the density of fluids: being immersed in fluids, as in water, brine, beer, brandy, etc., it determines the proportion of their density, or their specific gravity, and thence their quality. See Act of Congr. Jan. 12, 1825, 3 Story, Laws, 1976.

HYPOBOLUM (Lat.). **In Civil Law.** The name of the bequest or legacy given by the husband to his wife, at his death, above her dowry. Tech. Dict.

HYPOTHECATION. A right which a creditor has over a thing belonging to another, and which consists in a power to cause it to be sold, in order to be paid his claim out of the proceeds.

There are two species of hypothecation, one called pledge, *pignus*, and the other properly denominated hypothecation. Pledge is that species of hypothecation which is contracted by the delivery by the debtor to the creditor of the thing hypothecated. Hypothecation, properly so called, is that which is contracted without delivery of the thing hypothecated; 2 Bell, Com. 25.

In the common law, cases of hypothecation, in the strict sense of the civil law, that is of a pledge of a chattel without possession by the pledgee, are scarcely to be found; cases of bottomry bonds and claims for seamen's wages against ships are the nearest approach to it; but these are liens and privileges, rather than hypothecations; Story, Bailm. § 288. It seems that chattels not in existence, though they cannot be pledged, can be hypothecated, so that the lien will attach as soon as the chattel has been produced; 14 Pick. 497.

In Scotland *hypothec* is the landlord's right, independently of any stipulation, over the crop and stocking of his tenant, giving the landlord a security over the crop of each year for the rent of that year; Bell.

Conventional hypothecations are those which arise by agreement of the parties. Dig. 20. 1. 5.

General hypothecations are those by which the debtor hypothecates to his creditors all his estate which he has or may have.

Legal hypothecations are those which arise without any contract therefor between the parties, expressed or implied.

Special hypothecations are hypothecations of a particular estate.

Tacit hypothecations are such as the law gives in certain cases, without the consent of the parties, to secure the creditor. They are a species of legal hypothecation.

Thus, the public treasury has a lien over the property of public debtors; Code, 8. 15. 1. The landlord has a lien on the goods in the house leased, for the payment of his rent; Dig. 20. 2. 2; Code, 8. 15. 7. The builder has a lien, for his bill, on the house he has built; Dig. 20. 1. The pupil has a lien on the property of the guardian for the balance of his account; Dig. 46. 6. 22; Code, 5. 37. 20. There is hypothecation of the goods of a testator for the security of the legacy; Code, 6. 43. 1.

See, generally, Pothier, de l'Hyp.; Pothier, Mar. Contr. 145, n. 26; Merlin, Répert.; 2 Brown, Civ. Law, 195; Abbott, Shipping; Parsons, Mar. Law.

HYPOTHEQUE. In French Law. Hypothecation; the right acquired by the creditor over the immovable property which has been assigned to him by his debtor as security for his debt, although he be not placed in possession of it.

It thus corresponds to the mortgage of real property in English law, and is a real charge, following the property into whosesoever hands it comes. It may be *légale*, as in the case of the charge which the state has over the lands of its accountants, or which a married woman has over those of her husband; *judiciare*, when it is the result of a judgment of a court of justice; and *conventionelle*, when it is the result of an agreement of the parties. Brown.