A

LAW DICTIONARY.

J.

JACTITATION OF MARRIAGE. In English Ecclesiastical Law. The boasting by an individual that he or she has married another, from which it may happen that they will acquire the reputation of being married to each other.

The ecclesiastical courts may in such cases entertain a libel by the party injured, and on proof of the facts enjoin the wrong-doer to perpetual silence, and, as a punishment, make him pay the costs; 3 Bla. Com. 93; 2 Hagg. Cons. 423, 285; 2 Chitty, Pr. 459.

JACTURA (Lat. *jaceo*, to throw). A jettison.

JACTUS (Lat.). A throwing goods overboard to lighten or save the vessel, in which case the goods so sacrificed are a proper subject for general average. Dig. 14. 2, *de lege Rhodia de jactu;* 1 Pardessus, Collec. des Lois marit. 104 *et seq.;* Kuricke, Inst. Marit. Hanseat. tit. 8; 1 Parsons, Mar. Law, 288, note.

JAIL, GAOL (fr. Lat. *caveola*, a cage for birds). A place for the confinement of persons arrested for debt or for crime and held in the custody of the sheriff. Webster, Dict. It may be used also for the confinement of witnesses; and, in general, now there is no distinction between a jail and a prison, except that the latter belongs to a greater extent of country; thus, we say a state's prison and a county jail. Originally, a jail seems to have been a place where persons were confined to await further proceeding—*e. g.*, debtors till they paid their debts, witnesses and accused persons till a certain trial came on, etc.—as opposed to prison, which was for confinement, as punishment.

A jail is an *inhabited dwelling-house*, and a *house* within the statutes against arson; 2 W. Bla. 682; 1 Leach, 4th ed. 69; 2 East, Pl. Cr. 1020; 2 Cox, Cr. Cas. 65; 18 Johns, 115; 4 Call, 109; 4 Leigh, 683. See GAOL; PRISON.

JAMUNLINGI, JAMUNDILINGI. Freemen who delivered themselves and property to the protection of a more powerful person, in order to avoid military service and other burdens. Spelman, Gloss. Also, a species of serfs among the Germans. Du Cange. The same as *commendati*.

JEOFAILE (L. Fr.). I have failed; I am in error.

Certain statutes are called statutes of amendments and jeofailes, because, where a pleader perceives any slip in the form of his proceedings, and acknowledges the error (jeofaile), he is at liberty, by those statutes, to amend it. The amendment, however, is seldom made; but the benefit is attained by the court's overlooking the exception; 3 Bla. Com. 407; 1 Saund. 228, n. 1; Doct. Pl. 297; Dane, Abr. These statutes do not apply to indictments.

JEOPARDY. Peril; danger.

The term is used in this sense in the act establishing and regulating the post-office department. The words of the act are, "or if, in effecting such robbery of the mail the first time, the offender shall wound the person having the custody thereof, or put his life in jeopardy by the use of dangerous weapons, such offender shall suffer death." 3 Story, Laws U. S. 1992. See Baldw. 93-95.

The situation of a prisoner when a trial jury is sworn and impanelled to try his case upon a valid indictment, and such jury has been charged with his deliverance. 1 Bail. 655; 7 Blackf. 191; 1 Gray, 490; 38 Me. 574, 586; 23 Penn. 12; 12 Vt. 93.

This is the sense in which the term is used in the United States constitution: "no person . . . . shall be subject for the same offence to be twice put in jeopardy of life or limb," U. S. Const. art. v. Amend., and in the statutes or constitutions of most if not all of the states.

This provision in the constitution of the U. S. binds only the United States; 2 Cow. 819; 5 How. 410; *contra*, 2 Pick. 521; 18 Johns. 187. In this country this rule depends in most cases on constitutional provisions; in England it is said not to be one of those principles which lie at the foundation of the law, but to be a matter of practice, which has fluctuated at various times, and which even at the present day may perhaps be considered as not finally settled; *per* Cockburn, C. J., in L. R. 1 Q. B. 289.

The constitutional provision, which refers to "*life or limb*," properly interpreted, extends only to treason and felonies, but it has usually been extended to misdemeanors; 1 Bish. Cr. L. § 990; 26 Ala. 135; but not to proceedings for the recovery of penalties, nor to applications for sureties of the peace; 1 Bish. Cr. L. § 990.

A person is in legal jeopardy when he is put upon trial, before a court of competent jurisdiction, upon indictment or information which is sufficient in form and substance to sustain a conviction, and a jury has been charged with his deliverance; Cooley, Const. Lim. 404; approved in 9 Bush, 333; 21 Alb. L. J. 398. If, however, the court had no jurisdiction of the cause; 7 Mich. 161; or if the indictment was so defective that no valid judgment could be rendered upon it; 36 Ga. 447; 105 Mass. 53; or if by any overruling necessity the jury are discharged without a verdict; 9 Wheat. 579; 68 N. C. 203; or if the term of the court comes to an end before the trial is finished; 5 Ind. 290; or the jury are discharged with the consent of the defendant, express or implied; 9 Metc. 572; or if after verdict against the accused, it has been set aside on his motion for a new trial or on writ of error, or the judgment thereon has been arrested; 13 Johns. 351; 8 Kans. 232; s. c. 12 Am. Rep. 469, n.; in these cases, the accused may again be put upon trial and the proceedings had will constitute no protection; Cooley, Const. Lim. 405. But if a prisoner has been indicted for murder, convicted of murder in the second degree, and afterwards granted a new trial on his own motion, he cannot, on the second trial, be convicted of a higher crime than murder in the second degree; 33 Wisc. 121; s. c. 14 Am. Rep. 748, n.; 35 Mo. 105; 11 Iowa, 352; *contra*, 20 Ohio St. 572; 8 Kans. 232; s. c. 12 Am. Rep. 469, n. Where the indictment was good and the judgment erroneously arrested, the verdict was held to be a bar; 2 Yerg. 24. Where a prisoner during his trial fled the jurisdiction, and it became necessary to discharge the jury, it was held that he was never in jeopardy; 13 Reporter, 105 (S. C. of Cal.). See DISCHARGE OF A JURY.

JERGUER. In English Law. An officer of the custom-house, who oversees the waiters. Techn. Dict.

JETTISON, JETSAM. The casting out of a vessel, from necessity, a part of the lading. The thing so cast out.

It differs from flotsam in this, that in the latter the goods float, while in the former they sink, and remain under water. It differs also from ligan.

The jettison must be made for sufficient cause, and not for groundless timidity. It must be made in a case of extremity, when the ship is in danger of perishing by the fury of a storm, or is laboring upon rocks or shallows, or is closely pursued by pirates or enemies.

If the residue of the cargo be saved by such sacrifice, the property saved is bound to pay a proportion of the loss. In ascertaining such average loss, the goods lost and saved are both to be valued at the price they would have brought at the place of delivery on the ship's arrival there, freight, duties, and other charges being deducted. Marsh. Ins. 246; 3 Kent, 185–187; Park. Ins. 123; Pothier, *Charte-partie*, n. 108 *et suiv.*; Boulay-Paty, Dr. Com. tit. 13; Pardessus, Dr. Com. n. 734; 1 Ware, 9. The owner of a cargo jettisoned has a maritime lien on the vessel for the contributory share from the vessel on an adjustment of the average, which may be enforced by a proceeding *in venue* in the admiralty; 19 How. 162; 2 Pars. Marit. Law, 373. See AVERAGE; ADJUSTMENT.

JEUX DE BOURSE. In French Law. A kind of gambling or speculation, which consists of sales and purchases which bind neither of the parties to deliver the things which are the object of the sale, and which are settled by paying the difference in the value of the things sold between the day of the sale and that appointed for delivery of such things. 1 Pardessus, Droit Com. n. 162.

JOB. The whole of a thing which is to be done. In this sense it is employed in the Civil Code of Louisiana, art. 2727: "To build by plot, or to work by the job," says that article, "is to undertake a building for a certain stipulated price." See Duranton, du Contr. de Louage, liv. 3, t. 8, nn. 248, 263; Pothier, Contr. de Louage, nn. 392, 394; DEVIATION.

JOBBER. In Commercial Law. One who buys and sells articles for others. Stock-jobbers are those who buy and sell stocks for others. This term is also applied to those who speculate in stocks on their own account.

JOCALIA (Lat.). Jewels. This term was formerly more properly applied to those ornaments which women, although married, call their own. When these *jocalia* are not suitable to her degree, they are assets for the payment of debts; 1 Rolle, Abr. 911.

JOINDER. In Pleading. Union; concurrence.

Of Actions. IN CIVIL CASES. The union of two or more causes of action in the same declaration.

At common law, to allow a joinder, the form of actions must be such that the same plea may be pleaded and the same judgment given on all the counts of the declaration, or, the counts being of the same nature, that the same judgment may be given on all; 2 Saund. 177 *c*; 1 Term, 276; Comyns, Dig. *Actions* (G); 16 N. Y. 548; 6 Du. N. Y. 43; 4 Cal. 27; 12 La. An. 873; 33 N. H. 495. And all the causes of action must have accrued to the plaintiff or against the defendant; 12 La. An. 44; in the same right, though it may have been by different titles. Thus, a plaintiff cannot join a demand in his own right to one as representative of another person, or against the defendant himself to one against him in a representative capacity; 2 Viner,

Abr. 62; Bacon, Abr. *Action in General* (C); 21 Barb. 245. See 25 Mo. 357.

In *real actions* there can be but one count.

In *mixed actions* joinder occurs, though but infrequently; 8 Co. 876; Poph. 24; Cro. Eliz. 290.

In *personal actions* joinder is frequent.

By statutes, in many of the states, joinder of actions is allowed and required to a greater extent than at common law.

In Criminal Cases. Different offences of the same general nature may be joined in the same indictment; 1 Chitty, Cr. Law, 253, 255; 29 Ala. N. S. 62; 10 Cush. 530; 28 Miss. 267; 4 Ohio St. 440; 6 McLean, 596; 4 Denio, 133; 18 Me. 103; 1 Cheves, 103; 4 Ark. 56; see 14 Gratt. 687; and it is no cause of arrest of judgment that they have been so joined; 29 E. L. & Eq. 536; 29 N. H. 184; 11 Ga. 225; 3 W. & M. 164; see 1 Strobh. 455; but not in the same count; 5 R. I. 385; 24 Mo. 353; 1 Rich. 260; 4 Humphr. 25; and an indictment may be quashed, in the discretion of the court, where the counts are joined in such manner as will confound the evidence; 17 Mo. 544; 19 Ark. 563, 577; 20 Miss. 468.

No court, it is said, will, however, permit a prisoner to be tried upon one indictment for two distinct and separate crimes; 29 N. H. 184. See 5 S. & R. 59; 12 *id.* 69; 10 Cush. 530.

In Demurrer. The answer made to a demurrer. Co. Litt. 71 *b*. The act of making such answer is merely a matter of form, but must be made within a reasonable time; 10 Rich. 49.

Of Issue. The act by which the parties to a cause arrive at that stage of it in their pleadings, that one asserts a fact to be so, and the other denies it. For example, when one party denies the fact pleaded by his antagonist, who has tendered the issue thus, "And this he prays may be inquired of by the country," or, "and of this he puts himself upon the country," the party denying the fact may immediately subjoin, "And the said A B does the like;" when the issue is said to be joined.

Of Parties. In Civil Cases.

In Equity.

All parties materially interested in the subject of a suit in equity should be made parties, however numerous; Mitf. Eq. Plead. 144; 2 Eq. Cas. Abr. 179; 3 Swanst. 139; 1 Pet. 299; 2 *id.* 482; 13 *id.* 359; 7 Cra. 72; 2 Mas. 181; 5 McLean, 444; 2 Paine, 536; 1 Johns. Ch. 349; 2 Bibb, 184; 24 Me. 20; 3 Vt. 160; 7 Conn. 342; 11 Gill & J. 426; 4 Rand. 451; 1 Bail. Ch. 384; 7 Ired. Eq. No. C. 261; 2 Stew. Ala. 280; 6 Blackf. 223. But, where the parties are very numerous, a portion may appear for all in the same situation; 16 Ves. 321; 16 How. 288; 11 Conn. 112; 3 Paige, Ch. 222; 19 Barb. 517.

Mere possible or contingent interest does not render its possessor a necessary party; 6 Wheat. 550; 3 Conn. 354; 5 Cow. 719. And see 3 Bibb, 86; 6 J. J. Marsh. 425.

There need be no connection but community of interests; 2 Ala. N. S. 209.

Plaintiffs.

All persons having a unity of interest in the subject-matter; 3 Barb. Ch. 397; 2 Ala. N. S. 209; and in the object to be attained; 2 Iowa, 55; 3 *id.* 443; who are entitled to relief; 14 Ala. N. S. 135; 17 *id.* 631; may join as plaintiffs. The claims must not arise under different contracts; 8 Pet. 123; 5 J. J. Marsh. 154; 6 *id.* 33; or to the same person in different capacities; 1 Busb. Eq. 196. And see 1 Paige, Ch. 637; 4 *id.* 23; 5 Metc. Mass. 118.

Assignor and *assignee*. The assignor of a contract for the sale of lands should be joined in a suit by the assignee for specific performance; 3 Sandf. Ch. 614; and the assignor of part of his interest in a patent in a suit by assignee for violation; 3 McLean, 350.

But he should not be joined where he has parted with all his legal and beneficial interest; 32 Me. 203, 343; 13 B. Monr. 210. The assignee of a mere chose in action may sue in his own name, in equity; 17 How. 43; 5 Wisc. 270; 6 B. Monr. 540; 7 *id.* 273.

Corporations. Two or more may join if their interest is joint; 8 Ves. 706. A corporation may join with its individual members to establish an exemption on their behalf; 3 Anstr. 738.

Husband and *wife* must join where the husband asserts an interest in behalf of his wife; 6 B. Monr. 514; 3 Hayw. 252; 5 Johns. Ch. 196; 9 Ala. 133: as, for a legacy; 5 Johns. Ch. 196; or for property devised or descended to her during coverture; 5 J. J. Marsh. 179, 600; or where he applies for an injunction to restrain a suit at law against both, affecting her interest; 1 Barb. Ch. 313.

Idiots and *lunatics* may be joined or not in bills by their committees, at the election of the committee, to set aside acts done by them whilst under imbecility; 1 Ch. Cas. 112; 1 Jac. 377; 7 Johns. Ch. 139. They must be joined in suits brought for the partition of real estate; 3 Barb. Ch. 24. In England it seems to be the custom to join; 2 Vern. 678. See Story, Eq. Pl. § 64, and note; Story, Eq. Jur. § 1336, and note.

Infants. Several may join in the same bill for an account of the rents and profits of their estate; 2 Bland, Ch. 68.

Trustee and *cestui que trust* should join in a bill to recover the trust fund; 5 Dana, 128; but need not to foreclose a mortgage; 5 Ala. 447; 4 Abb. Pr. 106; nor to redeem one made by the trustee; 2 Gray, 190. And see 3 Edw. Ch. 175; 7 Ala. N. S. 386.

Defendants.

In general, all persons interested in the subject-matter of a suit who cannot be made plaintiffs should be made defendants. They

may claim under different rights if they possess an interest centring in the point in issue; 4 Cow. 682.

Bills for discovery need not contain all the parties interested as defendants; 1 M'Cord, Ch. 301; and a person may be joined merely as defendant in such bill; 3 Ala. 214. A person should not be joined as a party to such bill who may be called as a witness on trial; 13 Ill. 212; 3 Barb. Ch. 482. And see 1 Chandl. 286.

Assignor and *assignee.* An assignor who retains even the slightest interest in the subject-matter must be made a party; 2 Dev. & B. Eq. 395; 1 Green, Ch. 347; 2 Paige, Ch. 289; 11 Cush. 111: as a covenantee in a suit by a remote assignee; 1 Dana, 585; and the original plaintiff in a creditor's bill by the assignee of a judgment; 4 B. Monr. 594.

A fraudulent assignee need not be joined in a bill by a creditor to obtain satisfaction out of a fund so transferred; 1 Paige, Ch. 637. The assignee of a judgment must be a party in a suit to stay proceedings; 11 Paige, Ch. 438.

A party who acquires his interest *pendente lite* cannot be made a party; 5 Ill. 354. Otherwise of an assignee in insolvency, who must be made a party; 3 Johns. 543; 1 Johns. Ch. 339; 10 Paige, Ch. 20.

Corporations and *associations.* A corporation charged with a duty should be joined with the trustees it has appointed, in a suit for a breach; 1 Gray, 399; 7 Paige, Ch. 281. Where the legal title is in part of the members of an association, no others need be joined; 1 Gilm. 187.

Officers and agents may be made parties merely for purposes of discovery; 9 Paige, Ch. 188.

Creditors who have repudiated an assignment and pursued their remedy at law are properly made parties to a bill brought by the others against the trustee for an account and the enforcement of the trust; 3 Wisc. 367. So, when judgments are impeached and sought to be set aside for fraud, the plaintiffs therein are indispensable parties to the bill; 20 Ala. 200. To a bill brought against an assignee by a creditor claiming the final balance, the preferred creditors need not be made parties; 28 Vt. 465. See, also, 20 How. 94; 1 Md. Ch. Dec. 299; 3 Metc. Mass. 474; 11 Paige, Ch. 49.

Debtors must in some cases be joined with the executor in a suit by a creditor; though not ordinarily; Story, Eq. Pl. § 227; 1 Johns. Ch. 305. Where there are several debtors, all must be joined; 1 M'Cord, Ch. 301; unless utterly irresponsible; 1 Mich. 446. Judgment debtors must in some cases be joined in suits between the creditor and assignees or mortgagees; 5 Sandf. 271.

Executors and *administrators* should be made parties to a bill to dissolve a partnership; 21 Ga. 6; to a bill against heirs to discover assets; 7 B. Monr. 127; to a bill by creditors to subject lands fraudulently conveyed by the testator their debtor, to the satisfaction of their debt; 9 Mo. 304. See, also, 21 Ga. 433; 6 Munf. 520; 7 E. L. & Eq. 54.

Foreclosure suits. All persons having an interest, legal or equitable, existing at the commencement of a suit to foreclose mortgaged premises, must be made parties, or they will not be bound; 4 Johns. Ch. 605; 10 Paige, Ch. 307; 10 Ala. N. S. 283; 3 Ark. 364; 6 McLean, 416; 11 Tex. 526; including the mortgagor within a year after the sale of his interest by the sheriff; 4 Johns. Ch. 649; and his heirs and personal representative after his death; 2 Bland, 684. But bond-holders for whose benefit a mortgage has been made by a corporation to a trustee need not be made parties; 5 Gray, 162; Jones, Railroad Securities, § 42. A person claiming adversely to mortgagor and mortgagee cannot be made a defendant to such suit; 3 Barb. Ch. 438.

Heirs, distributees, and *devisees.* All the heirs should be made parties to a bill respecting the real estate of the testator; 3 N. Y. 261; 2 Ala. N. S. 571; 4 J. J. Marsh. 231; 7 *id.* 432; 5 Ill. 452; although the testator was one of several mortgagees of the vendee, and the bill be brought to enforce the vendor's lien; 6 B. Monr. 74; but need not to a bill affecting personalty; 1 M'Cord, Ch. 280. All the devisees are necessary parties to a bill to set aside the will; 2 Dana, 155; or to enjoin executors from selling lands belonging to the testator's estate; 2 T. B. Monr. 30. All the distributees are necessary parties to a bill for distribution; 1 B. Monr. 27; to a bill by the widow of the intestate against the administrator to recover her share of the estate; 4 Bibb, 543; and to a bill against an administrator to charge the estate with an annual payment to preserve the residue; 1 Hill, Ch. 51. See, also, 11 Paige, Ch. 49; 2 T. B. Monr. 95; 5 *id.* 573.

Idiots and *lunatics* should be joined with their committees when their interests conflict and must be settled in the suit; 2 Johns. Ch. 242; 3 Paige, Ch. 470.

Partners must, in general, be all joined in a bill for dissolution of the partnership, but need not if without the jurisdiction; 17 How. 468; 12 Metc. 329. And see 3 Stor. 335.

Assignees of insolvent partners must be joined; 10 Me. 255.

Dormant partners need not be joined when not known in the transaction on which the bill is founded; 7 Blackf. 218.

Principal and *agent* should be joined if there be a charge of fraud in which the agent participated; 3 Stor. 611; 12 Ark. 720; and the agent should be joined where he binds himself individually; 3 A. K. Marsh. 484.

See, also, 5 H. & J. 147; 8 Ired. Eq. 229; 2 D. & B. 357; 1 Barb. Ch. 157.

Trustee and *cestui que trust.* If a trustee has parted with the trust fund, the *cestui que trust* may proceed against the trustee alone to compel satisfaction, or the fraudulent assignee may be joined with him at the election of the complainant; 2 Paige, Ch. 278.

The trustees under a settlement of real estate, against whom a trust or power given to them to sell the estate is to be enforced, are necessary parties to a suit for that purpose; 39 E. L. & Eq. 76. See, also, *id.* 225; 24 Miss. 597; 19 How. 376; 5 Du. N. Y. 168; 8 Md. 34.

At Law.

In actions ex contractu.

All who have a joint legal interest or are jointly entitled must join in an action on a contract, even though it be in terms several, or be entered into by one in behalf of all; Brown, Partn. 18; 1 Saund. 153; Archb. Civ. Pl. 58; Metc. Yelv. 177, n. 1; 10 East, 418; 8 S. & R. 308; 15 Me. 295; 3 Brev. 249; 3 Ark. 565; 16 Barb. 325: as, where the consideration moves from several jointly; 2 Wms. Saund. 116 *a*; 4 M. & W. 295; 5 *id.* 698; or was taken from a joint fund; 19 Johns. 218; 1 Meigs, 394.

One of several joint obligees, payees, or assignees may sue in the name of all; 10 Yerg. 235. See 4 Saund. 657.

Some contracts may be considered as either joint or several, and in such case all may join, or each may sue separately; but part cannot join leaving the others to sue separately.

In an action for a breach of a joint contract made by several, all the contracting parties should be made defendants; 1 Saund. 158 n.; even though one or more be bankrupt or insolvent; 2 Maule & S. 33; but see 1 Wils. 89; or an infant; but not if the contract be utterly void as to him; 3 Taunt. 307; 5 Johns. 160, 280; 11 *id.* 101; 5 Mass. 270; 1 Pick. 500.

On a joint and several contract, each may be sued separately, or all together; 1 Pet. 73; 1 Wend. 524.

Executors and *administrators* must bring their actions in the joint names of all; 5 Scott, N. R. 728; 1 Saund. 291 *g*; 2 *id.* 213; 2 N. & M'C. 70; 2 Penning. 721; 1 Dutch. 374; even though some are infants; Broom, Part. 104.

All the executors who have proved the will are to be joined as defendants in an action on the testator's contract; Broom, Part. 196; 1 Lev. 161; 1 Cr. M. & R. 74; 4 Bingh. 704. But an executor *de son tort* is not to be joined with the rightful executor. And the executors are not to be joined with other persons who were joint contractors with the deceased; 2 Wheat. 344; 6 S. & R. 272; 5 Cal. 173.

Administrators are to be joined, like executors; Comyns, Dig. *Administrators* (B 12). Foreign executors and administrators are not recognized as such, in general; 2 Jones, Eq. 276; 10 Rich. 393; 7 Ind. 211.

Husband and *wife* must join to recover rent due the wife before coverture on her lease while sole; Co. Litt. 55 *b*; Cro. Eliz. 700; on the lease by both of lands in which she has a life estate, where the covenant runs to both; 20 Barb. 269; but on a covenant generally to both, the husband may sue alone; 2 Mod. 217; 1 B. & C. 443; 1 Bulstr. 331; in all actions in implied promises to the wife acting *in autre droit;* Comyns, Dig. *Baron & F.* (V); 9 M. & W. 694; 4 Tex. 283; as to suit on a bond to both, see 2 Penning. 827; on a contract running with land of which they are joint assignees; Woodf. Landl. & T. 190; Cro. Car. 503; in general, to recover any of the wife's choses in action where the cause of action would survive to her; Comyns, Dig. *Baron & F.* (V); 1 Chitty, Pl. 17; 1 Maule & S. 180; 1 P. A. Browne, 263; 13 Wend. 271; 10 Pick. 470; 9 Ired. 163; 21 Conn. 557; 24 Miss. 245; 2 Wisc. 22.

They may join at the husband's election in suit on a covenant to repair, when they become joint grantees of a reversion; Cro. Jac. 399; to recover the value of the wife's choses in action; 5 Harr. Del. 57; 24 Conn. 45; 2 Wisc. 22; 2 Mod. 217; 2 Ad. & E. 30; 2 Maule & S. 396, n.; in case of joinder the action survives to her; 6 M. & W. 426; 10 B. & C. 558; in case of an express promise to the wife, or to both where she is the meritorious cause of action; Cro. Jac. 77, 205; 1 Chitty, Pl. 18; 5 Harr. Del. 57; 32 Ala. N. S. 30.

They must, in general, be joined in actions on contracts entered into by the wife *dum sola;* 1 Kebl. 281; 2 Term, 480; 7 *id.* 348; 1 Taunt. 217; 7 *id.* 432; 8 Johns. 149; 1 Grant, Cas. 21; 5 Harr. Del. 357; 25 Vt. 207; see 15 Johns. 403; 17 *id.* 167; 7 Mass. 291; where the cause of action accrues against the wife *in autre droit;* Cro. Car. 518. They may be joined when the husband promises anew to pay the debt of the wife contracted *dum sola;* 7 Term, 349; for rent or breaches of covenant on a joint lease to both for the wife's benefit; Broom, Part. 178, 179.

Joint tenants must join in debt or an avowry for rent; Broom, Part. 24; but one of several may make a separate demise, thus severing the tenancy; Bacon, Abr. *Joint Ten.* (H 2); 12 East, 39, 57, 61; 3 Campb. 190; and one may maintain ejectment against his co-tenants; Woodf. Landl. & T. 789.

Partners must all join in suing third parties on partnership transactions; 1 Esp. 183; 2 Campb. 302; 18 Barb. 534; 7 Rich. 118; including only those who were such at the time the cause of action accrued; Broom, Part. 65; although one or more may have become insolvent; 2 Cr. & M. 318; but not joining the personal representative of a deceased partner; 2 Salk. 444; 2 Maule & S. 225; 4 B. & Ald. 374; 9 B. & C. 538; with a limitation to the actual parties to the instrument in case of specialties; 6 Maule & S. 75; and including dormant partners or not, at the election of the ostensible partners; 2 Esp. 468; 10 B. & C. 671; 4 B. & Ald. 437. See 4 Wend. 628. Where one partner contracts in his name for the firm, he may sue alone, or

all may join; 4 B. & Ad. 815; 4 B. & Ald. 437; but alone if he was evidently dealt with as the sole party in interest; 1 Maule & S. 249.

The surviving partners; 3 Ball & B. 30; 1 B. & Ald. 29, 522; 18 Barb. 592; must all be joined as defendants in suits on partnership contracts; 1 East, 30. And third parties are not bound to know the arrangements of partners amongst themselves; 4 Maule & S. 482; 8 M. & W. 703, 710.

A partner need not be joined if he was not known as such at the time of making the contract and there was no indication of his being a partner; 1 Bosw. 28; 19 Ark. 701. And see PARTNERSHIP.

Tenants in common should join in an action on any joint contract; Comyns, Dig. *Abatement* (E 10).

Trustees must all join in bringing an action; 1 Wend. 470.

In actions ex delicto.

Joint owners must, in general, join in an action for a tortious injury to their property; 1 Saund. 291 *g*; 6 Term, 766; 7 *id.* 297; 11 N. H. 141; in trover, for its conversion; 5 East, 407; in replevin, to get possession; 6 Pick. 571; 8 Mo. 522; 15 Me. 245; or in detinue, for its detention, or for injury to land; 3 Bingh. 455; 29 Barb. 9.

So may several owners who sustain a joint damage; 1 W. & M. 223.

For injury to the *person*, plaintiffs cannot, in general, join; 2 Wms. Saund. 117 *a*; Cro. Car. 512; Cro. Eliz. 472.

Partners may join for slanders; 3 Bingh. 452; 10 *id.* 270; 1 C. & K. 568; 8 C. & P. 708; for false representations; 17 Mass. 182; injuring the partnership.

An action for the infringement of letters patent may be brought jointly by all the parties who at the time of the infringement were the holders of the title; 1 Gall. 429; 1 McAll. 82.

In cases where several can join in the commission of a tort, they may be joined in an action as defendants; 3 East, 62; 6 Taunt. 29; 14 Johns. 462; 19 *id.* 381; as, in trover; 1 Maule & S. 588; in trespass; 2 Wms. 117 *a*; for libel; Broom, Part. 249,—not for slander; Cro. Jac. 647; in trespass; 1 C. & M. 96.

Husband and *wife* must join in action for direct damages resulting from personal injury to the wife; 3 Bla. Com. 140; 4 Iowa, 420; in detinue, for the property which was the wife's before marriage; 2 Tayl. 266; see 30 Ala. N. S. 582; for injury to the wife's property before marriage; 2 Jones, No. C. 59; where the right of action accrues to the wife *in autre droit;* Comyns, Dig. *Baron & F.* (V); 11 Mod. 177; 2 B. & P. 407; and, generally, in all cases where the cause of action by law survives to the wife; 4 B. & Ald. 523; 10 Pick. 470; 35 Me. 89.

They may join for slander of the wife, if the words spoken are actionable *per se*, for the direct injury; 4 M. & W. 5; 22 Barb. 396; 2 Hill, N. Y. 309; 2 T. B. Monr. 56; 25 Mo. 580; 4 Iowa, 420; 11 Cush. 10; and in ejectment for lands of the wife; Broom, Part. 235; 1 Bulstr. 21.

They *must* be joined as defendants for torts committed by the wife before marriage; Co. Litt. 351 *b*; 5 Binn. 43; or during coverture; 19 Barb. 321; 2 E. D. Smith, 90; or for libel or slander uttered by her; 5 C. & P. 484; and in action for waste by the wife, before marriage, as administratrix; 2 Wms. Ex. 1441.

They may be joined in trespass for their joint act; 2 Stra. 1094; 4 Bingh. N. C. 96; 3 B. & Ald. 687; 6 Gratt. 213.

Joint tenants and parceners, during the continuance of the joint estate, must join in all actions *ex delicto* relative thereto, as in trespass to their land, and in trover or replevin for their goods; 2 Bla. Com. 182, 188; Bacon, Abr. *Joint Ten.* (K); 2 Salk. 205; 29 Barb. 29. Joint tenants may join in an action for slander of the title to their estate; 3 Bingh. 455. They should be sued jointly, in trespass, trover, or case, for any thing respecting the land held in common; 5 Term, 651; Comyns, Dig. *Abatement* (F 6); 1 Wms. Saund. 291 *e*. Joint tenants should join in an avowry or cognizance for rent; 3 Salk. 207; 1 *id.* 390; or for taking cattle damage feasant; Bacon, Abr. *Joint Ten.* (K); or one joint tenant should avow in his own right, and as bailiff to the other; 3 Salk. 207. But a tenant in common cannot avow the taking of the cattle of a stranger upon the land damage feasant, without making himself bailiff or servant to his co-tenant; 2 H. Bla. 388, 389; Bacon, Abr. *Replevin* (K).

Master and *servant*, where co-trespassers, should be joined though they be not equally culpable; 2 Lev. 172; 1 Bingh. 418; 5 B. & C. 559. *Partners* may join for a joint injury in relation to the joint property; 3 C. & P. 196. They may be joined as defendants where property is taken by one of the firm for its benefit; 1 C. & M. 93; and where the firm makes fraudulent representations as to the credit of a third person, whereby the firm gets benefit; 17 Mass. 182.

Tenants in common must join for a trespass upon the lands held in common; Littleton, § 315; 15 Johns. 497; 8 Cow. 304; 28 Me. 136; or for taking away their common property; Cro. Eliz. 143; or for detaining it; 1 Hill, N. Y. 234; or for a nuisance to their estate; 14 Johns. 246.

IN CRIMINAL CASES. Two or more persons who have committed a crime may be jointly indicted therefor; 7 Gratt. 619; 6 McLean, 596; 10 Ired. 153; 8 Blackf. 205; only where the offence is such that it may be committed by two jointly; 3 Sneed, 107.

They may have a separate trial, however, in the discretion of the court; 15 Ill. 536; 1 Park. Cr. Ca. 424; 7 Gratt. 619; 10 Cush. 530; 5 Strobh. 85; 9 Ala. N. S. 137; and

in some states as a matter of right; 1 Park. Cr. Ca. 371.

See Dicey, Parties; Steph. Pl.

JOINT ACTION. An action brought by two or more as plaintiffs or against two or more as defendants. See 1 Parsons, Contr.; ACTIONS; JOINDER, § 1.

JOINT BOND. The bond of two or more obligors, the action to enforce which must be joint against them all.

JOINT AND SEVERAL BOND. A bond of two or more obligors, who bind themselves jointly and severally to the obligees, who can sue all the obligors jointly, or any one of them separately, for the whole amount, but cannot bring a joint action against part,—that is, treat it as joint as to some and several as to others. Upon the payment of the whole by one of such obligors, a right to contribution arises in his favor against the other obligors.

JOINT CONTRACT. One in which the contractors are jointly bound to perform the promise or obligation therein contained, or entitled to receive the benefit of such promise or obligation.

It is a general rule that a joint contract survives, whatever may be the beneficial interests of the parties under it. When a partner, covenantor, or other person entitled, having a joint interest in a contract not running with the land, dies, the right to sue survives in the other partner, etc.; 1 Dall. 65, 248; Addison, Contr. 285. And when the obligation or promise is to perform something jointly by the obligors or promisors, and one dies, the action must be brought against the survivor; Hamm. Partn. 156; Barb. Partn.

When all the parties interested in a joint contract die, the action must be brought by the executors or administrators of the last surviving obligee against the executors or administrators of the last surviving obligor; Add. Contr. 285. See CONTRACTS; PARTIES TO ACTIONS; CO-OBLIGOR.

JOINT EXECUTORS. Those who are joined in the execution of a will.

Joint executors are considered in law as but one person representing the testator; and, therefore, the acts of any one of them, which relate either to the delivery, gift, sale, payment, possession, or release of the testator's goods, are deemed, as regards the persons with whom they contract, the acts of all; Bacon, Abr.; 11 Viner, Abr. 358; Comyns, Dig. *Administration* (B 12); 1 Dane, Abr. 583; 2 Litt. Ky. 315; Dy. 23, in marg.; 16 S. & R. 337. But an executor cannot, without the knowledge of his co-executor, confess a judgment for a claim part of which was barred by the act of limitations, so as to bind the estate of the testator; 6 Penn. 267.

As a general rule, it may be laid down that each executor is liable for his own wrong or *devastavit* only, and not for that of his colleague. He may be rendered liable, however, for the misplaced confidence which he may have reposed in his co-executor: as, if he signs a receipt for money, in conjunction with another executor, and he receives no part of the money, but agrees that the other executor shall retain it, and apply it to his own use, this is his own misapplication, for which he is responsible; 1 P. Wms. 241, n. 1; 1 Sch. & L. 341; 2 *id.* 231; 7 East, 256; 11 Johns. 16; 11 S. & R. 71; 5 Johns. Ch. 283. And see 2 Brown, Ch. 116; 3 *id.* 112. Fonbl. Eq. b. 2, c. 7, s. 5, n. k.

Upon the death of one of several joint executors, the right of administering the estate of the testator devolves upon the survivors; 3 Atk. 509; Comyns, Dig. *Administration* (B 12).

JOINT INDICTMENT. One indictment brought against two or more offenders, charging the defendants jointly. It may be where there is a joint criminal act, without any regard to any particular personal default or defect of either of the defendants: thus, there may be a joint indictment against the joint keepers of a gaming-house. 1 Ventr. 302; 2 Hawk. Pl. Cr. 240.

JOINT STOCK BANKS. In English Law. A species of *quasi corporations*, or companies regulated by deeds of settlement.

In some respects they stand in the same situation as other unincorporated bodies; but they differ from the latter in this, that they are invested by certain statutes with powers and privileges usually incident to corporations. These enactments provide for the continuance of the partnership notwithstanding a change of partners. The death, bankruptcy, or the sale by a partner of his share, does not affect the identity of the partnership; it continues the same body, under the same name, by virtue of the act of parliament, notwithstanding these changes. 7 Geo. IV. c. 46, s. 9.

JOINT STOCK COMPANY. An association of individuals for purposes of profit, possessing a common capital contributed by the members composing it, such capital being commonly divided into shares, of which each member possesses one or more, and which are transferable by the owner. The business of the association is under the control of certain selected individuals, called directors; such an association was, at common law, merely a large partnership; Shelford, Joint St. Comp. 1. A *quasi* partnership, invested by statutes, in England and many of the states, with some of the privileges of a corporation. See 10 Wall. 556; L. R. 4 Eq. 695.

There is in such a company no *dilectus personarum*, that is, no choice about admitting partners; the shares into which the capital is divided are transferable at the pleasure of the person holding them, and the assignee becomes a partner by virtue of the transfer, and the rights and duties of the partners or members are determined by articles of association, or, in England, by a deed of settlement. A partnership whereof the capital is divided, or agreed to be divided, into shares so as to be transferable without the express consent of all the co-partners. 1 Parsons, Contr. 121. The 7 & 8 Vict. includes within the term *joint*

stock company all life, fire, and marine insurance companies, and every partnership consisting of more than twenty-five members. In this country, where there were formerly no statutes providing for joint stock companies, they were rather to be regarded as partnerships; 2 Lindl. Part. 1083; 63 Penn. 273; 3 Kent, 262. Statutes regulating the formation of these companies exist in New York, Massachusetts, and Maine. In New York they have all the attributes of a corporation, except the right to have and use a common seal, and an action is properly brought for or against the president or treasurer; 74 N. Y. 234; but it has been held that a company formed under the New York law, is not a corporation, but must be sued as a partnership; 128 Mass. 445; 60 Me. 468; *contra*, 50 Barb. 157; 6 N. Y. 542. An English joint stock company, however, is held to be a corporation in this country; 10 Wall. 566; see *infra*. The words, joint stock company, in the Massachusetts statutes, refer to companies organized under the general laws as corporations; 121 Mass. 524.

"A joint stock company (in this case a fire insurance company) which by its deed of settlement in England and certain acts of parliament is endowed with the faculties and powers mentioned below, is a corporation and will be so held in this country, notwithstanding the acts of parliament declaring it shall not be so held. These faculties and powers are: 1. A distinctive artificial name by which it can make contracts. 2. A statutory form to sue and be sued in the name of its officers as representing the association. 3. A statutory recognition of the association as an entity distinct from its members, by allowing them to sue and be sued by it. 4. A provision for its perpetuity by transfer of its shares, so as to secure succession of membership. Such corporations, whether organized under the laws of a state of the Union, or a foreign government, may be taxed by another state, for the privilege of conducting their corporate business within the latter." 10 Wall. 566. See Shelf.; Steph.; Joint St. Co.; Lindl. Parnt.

JOINT TENANTS. Two or more persons to whom are granted lands or tenements to hold in fee-simple, fee-tail, for life, for years, or at will. 2 Bla. Com. 179. The estate which they thus hold is called an estate in joint tenancy. See ESTATE IN JOINT TENANCY; JUS ACCRESCENDI; SURVIVOR.

JOINT TRUSTEES. Two or more persons who are intrusted with property for the benefit of one or more others.

Unlike joint executors, joint trustees cannot act separately, but must join both in conveyances and receipts; for one cannot sell without the others, or receive more of the consideration-money or be more a trustee than his partner. The trust having been given to the whole, it requires their joint act to do anything under it. They are not responsible for money received by their co-trustees, if the receipt be given for the mere purposes of form. But if receipts be given under circumstances purporting that the money, though not received by both, was under the control of both, such a receipt shall charge, and the consent that the other shall misapply the money, particularly where he has it in his power to secure it, renders him responsible; 11 S. & R. 71. See 1 Sch. & L. 341; 5 Johns. Ch. 283; Bac. Abr. *Uses and Trusts*, K; 2 Brown, Ch. 116; 3 *id.* 112.

JOINTRESS, JOINTURESS. A woman who has an estate settled on her by her husband, to hold during her life, if she survive him. Co. Litt. 46.

JOINTURE. A joint estate limited to both husband and wife. A competent livelihood of freehold for the wife, of lands and tenements, to take effect, in profit or possession, presently after the death of the husband, for the life of the wife at least.

Jointures are regulated by the statute of 27 Hen. VIII. c. 10, commonly called the statute of *uses*.

To make a good jointure, the following circumstances must concur, namely: It must take effect, in possession or profit, immediately from the death of the husband. It must be for the wife's life, or for some greater estate. It must be limited to the wife herself, and not to any other person in trust for her. It must be made in satisfaction for the wife's whole dower, and not of part of it only. The estate limited to the wife must be expressed or averred to be in satisfaction of her whole dower. It must be made before marriage. A jointure attended with all these circumstances is binding on the widow, and is a complete bar to the claim of dower; or, rather, it prevents its ever arising. But there are other modes of limiting an estate to a wife, which, Lord Coke says, are good jointures within the statute, provided the wife accepts of them after the death of the husband. She may, however, reject them, and claim her dower; Cruise, Dig. tit. 7; 2 Bla. Com. 137. In its more enlarged sense, a jointure signifies a joint estate limited to both husband and wife; 2 Bla. Com. 137. See 14 Viner, Abr. 540; Bacon, Abr.; 2 Bouvier, Inst. n. 1761 *et seq.*; Washb. R. P.

JOUR. A French word, signifying day. It is used in our old law-books: as, *tout jours*, forever. It is also frequently employed in the composition of words: as, *journal*, a day-book; *journeyman*, a man who works by the day; *journeys account*.

JOURNAL. In Maritime Law. The book kept on board of a ship or other vessel which contains an account of the ship's course, with a short history of every occurrence during the voyage. Another name for log-book. Chitty, Law of Nat. 199.

In Commercial Law. A book used among merchants, in which the contents of the waste-book are separated every month,

and entered on the debtor and creditor side, for more convenient posting in the ledger.

In Legislation. An account of the proceedings of a legislative body.

The constitution of the United States, art. 1, s. 5, directs that "each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy." See 2 Story, Const. 301.

The constitutions of the several states contain similar provisions.

The journal of either house is evidence of the action of that house upon all matters before it; 7 Cow. 613; Cowp. 17. It is a public record of which the courts may take judicial notice; 5 W. Va. 85; s. c. 17 Am. Rep. 28; 16 *id.* 647; 94 U. S. 260. *Contra*, 45 Ill. 119; 2 Cent. L. J. 407. If it should appear therefrom that any act did not receive the requisite vote, or that the act was not constitutionally adopted, the courts may adjudge the act void; Cooley, Const. Lim. 164. But every reasonable presumption is made in favor of the action of a legislative body; it will not be presumed from the mere silence of the journals that either house disregarded a constitutional requirement in the passage of an act, unless in cases where the constitution has required the journals to show the action that has been taken; 25 Ill. 181; 11 Ind. 424.

JOURNEYS ACCOUNT. In English Practice. A new writ which the plaintiff was permitted to sue out within a reasonable time after the abatement, without his fault, of the first writ. This time was computed with reference to the number of days which the plaintiff must spend in *journeying* to reach the court: hence the name of *journeys account*, that is, journeys *accomptes* or *counted*. This writ was *quasi* a continuance of the first writ, and so related back to it as to oust the defendant or tenant of his voucher, plea of *non-tenure*, *joint tenancy fully administered*, or any other plea arising upon matter happening after date of the first writ. Co. Litt. fol. 9 *b*.

This mode of proceeding has fallen into disuse, the practice now being to permit that writ to be quashed, and to sue out another. See Termes de la Ley; Bacon, Abr. *Abatement* (Q); 14 Viner, Abr. 558; 4 Comyn, Dig. 714; 7 M. & G. 762; 8 Cra. 84.

JUBILACION. In Spanish Law. The right of a public officer to retire from office, retaining his title and his salary, either in whole or in part, after he has attained the age of fifty years and been in public service at least twenty years, whenever his infirmities prevent him from discharging the duties of his office.

JUDAISMUS (Lat.). The religion and rites of the Jews. Du Cange. A quarter set apart for residence of Jews. Du Cange. A usurious rate of interest. 1 Mon. Angl. 839; 2 *id.* 10, 665. *Sex marcus sterlingorum ad acquietandam terram prædictum de Judaismo, inquo fuit impignorata.* Du Cange. An income anciently accruing to the king from the Jews. Blount.

JUDEX (Lat.). **In Roman Law.** One who, either in his own right or by appointment of the magistrate for the special case, judged causes.

Thus, the *prætor* was formerly called *judex*. But, generally, prætors and magistrates who judge of their own right are distinguished from *judices*, who are private persons, appointed by the prætor, on application of the plaintiff, to try the cause, as soon as issue is joined, and furnished by him with instructions as to the legal principles involved. They were variously called *judices delegati*, or *pedanei*, or *speciales*. They resemble in many respects jurors: thus, both are private persons, brought in at a certain stage of the proceedings, viz., issue joined, to try the cause, under instructions from the judge as to the law of the case. But civilians are not clear whether the *judices* had to decide the fact alone, or the law and fact. The *judex* resembles in many respects the *arbitrator*, or arbiter, the chief differences being, *first*, that the latter is appointed in cases of trust and confidence, the former in cases where the relations of the parties are governed by strict law (*in pactionibus strictis*); *second*, the latter has the whole control of case, and decides according to equity and good conscience, the former by strict formulæ; *third*, that the latter may be a magistrate, the former must be a private person; *fourth*, that the award of the arbiter derives its force from the agreement of submission, while the decree of the *judex* has its sanction in the command of the prætor to try the cause; Calvinus, Lex.; 1 Spence, Eq. Jur. 210, note; Mackeldey, Civ. Law, Kaufmann ed. § 193, note.

There was generally one judex, sometimes three,—in which case the decision of two, in the absence of the third, had no effect. Calvinus, Lex. Down to the time of handing over the cause to the *judex*, that is, till issue joined, the proceedings were before the prætor, and were said to be *in jure;* after that, before the *judex*, and were said to be *in judicio*. In all this we see the germ of the Anglo-Saxon system of judicature. 1 Spence, Eq. Jur. 67.

In Civil Law. A judge who conducts the trial from beginning to end; *magistratus*. The practice of calling in *judices* was disused before Justinian's time: therefore, in the Code, Institutes, and Novels, *judex* means judge in its modern sense. Heineccius, Elem. Jur. Civ. § 1327.

In Old English Law. A juror. Spelman, Gloss. A judge, in modern sense, especially—as opposed to *justiciarius*, *i. e.* a common-law judge—to denote an ecclesiastical judge. Bracton, fol. 401, 402.

JUDEX ORDINARIUS (Lat.). **In Civil Law.** A judge who had jurisdiction by his own right, not by another's appointment. Calvinus, Lex.; Vicat, Voc. Jur. Blackstone says that *judices ordinarii* decided only questions of fact, while questions of law were referred to the *centumviri;* but this would seem to be rather the definition of *judices selecti;* and not all questions of law were referred to the *centumviri*, but particular actions: *e. g. querela inofficiosi testamenti.* See 2 Bla. Com. 315; Vicat, Voc. Jur. Utr. *Centumviri.*

JUDGE. A public officer lawfully ap-

pointed to decide litigated questions according to law.

An officer so named in his commission, who presides in some court.

In its most extensive sense the term includes all officers appointed to decide litigated questions while acting in that capacity, including justices of the peace, and even jurors, it is said, who are judges of the facts; 4 Dall. 229; 3 Yeates, 300. In ordinary legal use, however, the term is limited to the sense of the second of the definitions here given; 15 Ill. 388; unless it may be that the case of a justice or commissioner acting judicially is to be considered an extension of this meaning. See 3 Cush. 584.

Judges are appointed or elected in a variety of ways in the United States. For the federal courts they are appointed by the president, by and with the consent of the senate; in some of the states they are appointed by the governor, the governor and senate, or by the legislature. See 11 Ind. 357; 29 Penn. 129; 2 Greene, Iowa, 458; 6 Ired. 5. The judges of the federal courts, and of the courts of some of the states, hold their offices during good behavior; see 3 Cush. 584; of others, as in New York, during good behavior, or until they shall attain a certain age; and of others, for a limited term of years. See 30 Miss. 206.

Impartiality is the first duty of a judge: if he has any (the slightest) interest in the cause, he is disqualified from sitting as judge; *aliquis non debet esse judex in propriâ causâ;* 8 Co. 118; 6 Pick. 109; 21 *id.* 101; 14 S. & R. 157; 4 Ohio St. 675; 17 Ga. 253; 17 Barb. 414; 22 N. H. 473; 19 Conn. 585. It is said to be discretionary with him whether he will sit in a cause in which he has been of counsel; 2 A. K. Marsh. 517; Coxe, N. J. 164. See 2 Binn. 454; 5 Ind. 230. But the practice is to refuse to sit in such case. And in 5 Coldw. 217, it was held that where the judge who rendered the judgment in the case had been counsel in it, the judgment was a nullity. A magistrate authorized to sign writs cannot sign them in his own case; 47 Conn. 316.

When the lord chancellor, who was a shareholder in a company in whose favor the vice chancellor had made a decree, affirmed this decree, the house of lords reversed this decree on that ground; 3 H. L. C. 759; where there is no other tribunal that can act, the judge may hear the case; 5 H. L. C. 88; 19 Johns. 501; *contra*, Hopk. Ch. 2; 105 Mass. 221. See Cooley, Const. Lim. 515; 25 Mich. 83.

It has been held that where the interest of the judge is merely that of a corporator in a municipal corporation, the legislature may provide that this shall constitute no disqualification when the corporation is a party — apparently on the ground that the interest is insignificant; 1 Gray, 475. But it is doubtful whether even the legislature can go beyond this class of cases and abolish the maxim; Cooley, Const. Lim. 516.

If one of the judges is disqualified on this ground, a judgment rendered will be void, even though the proper number may have concurred in the result, which includes the interested judge; 6 Q. B. 753. The objection may be raised for the first time in the appellate court; 6 Cush. 332; 3 H. L. C. 387.

A judge is not competent as a witness in a cause trying before him, for this among other reasons, that he can hardly be deemed capable of impartially deciding on the admissibility of his own testimony, or of weighing it against that of another; 2 Mart. La. N. S. 312; 2 Cal. 358. See Comyn, Dig. *Courts* (B 4), (C 2), (E 1), (P 16), *Justices* (I 1, 2, 3); Bacon, Abr. *Courts* (B); 1 Kent, 291; CHARGE.

While acting within the bounds of his jurisdiction, the judge is not responsible for any error of judgment or mistake he may commit as judge; 12 Co. 23; 2 Dall. 160; 2 N. & M'C. 168; 1 Day, Conn. 315; 5 Johns. 282; 9 *id.* 395; 3 A. K. Marsh. 76; 1 South. 74; 1 N. H. 374. It has been said that a judge of a court of superior jurisdiction is not liable for acts done in excess of his jurisdiction; 2 Bla. Rep. 1141 (*dictum*); 13 Wall. 335. Field, J., in 7 Wall. 523, said, *obiter*, that a judge of a court of superior jurisdiction is not liable when he acts in excess of his jurisdiction, except for malice. In 73 N. Y. 12, this point was so decided, but the court drew a distinction between the case where the judge had acquired no jurisdiction at all, and the case where the act was merely in excess of jurisdiction after jurisdiction had been acquired. There the judge of the circuit court had imposed a resentence upon a prisoner, and he was accordingly imprisoned; the supreme court held the second sentence illegal, and discharged the prisoner. These cases have been doubted in an article in 15 Am. L. Rev. 442. There is no distinction between a judge acting in court and acting judicially out of court, that is, in chambers; 3 Moore, P. C. 52; Wilm. 208.

"A judge of a court not of record is not liable for any injury sustained which is the result of an honest error of judgment in a matter wherein the court has jurisdiction, and when the act done is not of a purely ministerial nature." The rule is thus stated in 15 Am. L. Rev. 444. See further an article in Ir. L. T. and Sol. J., Nov. 13, 1880; 6 Am. Dec. 303; 29 Am. Rep. 80 n.; 23 Am. Rep. 690.

A judge who acts corruptly may be impeached; 5 Johns. 282; 8 Cow. 178; 4 Dall. 225.

JUDGE ADVOCATE. An officer of a court-martial who is to discharge certain duties at the trial of offenders. His duties are to prosecute in the name of the United States; but he shall so far consider himself as counsel for the prisoner, after the prisoner shall have made his plea, as to object to leading questions to any of the witnesses, or any question to the prisoner the answer to which might tend to criminate himself. He is, further, to swear the members of the court before they proceed upon any trial. Rules and Articles

of War, art. 69; 2 Story, U. S. Laws, 1001; Holt, Dig. *passim*.

JUDGE'S CERTIFICATE. In English Practice. The written statement of the judge who tried the cause that one of the parties is entitled to costs in the action. It is very important in some cases that these certificates should be obtained at the trial. See Tidd, Pr. 879; 3 Chitty, Pr. 458, 486; 3 Campb. 316; 5 B. & Ald. 796. A statement of the opinion of the court, signed by the judges, upon a question of law submitted to them by the chancellor for their decision. See 3 Bla. Com. 453; CASE STATED.

JUDGE-MADE LAW. A phrase used to indicate judicial decisions which construe away the meaning of statute, or find meanings in them the legislature never intended. It is sometimes used as meaning, simply, the law established by judicial precedent. Cooley, Const. Lim. 70, n. See Austin, Prov. of Jur.

JUDGE'S NOTES. Short statements, noted by a judge on the trial of a cause, of what transpires in the course of such trial.

They usually contain a statement of the testimony of witnesses, of documents offered or admitted in evidence, of offers of evidence and whether it has been received or rejected, and the like matters.

In general, judge's notes are not evidence of what transpired at a former trial, nor can they be read to prove what a deceased witness swore to on such former trial; for they are no part of the record, and he is not officially bound to make them. But in chancery, when a new trial is ordered of an issue sent out of chancery to a court of law, and it is suggested that some of the witnesses in the former trial are of an advanced age, an order may be made that, in the event of death or inability to attend, their testimony may be read from the judge's notes; 1 Greenl. Ev. § 166.

JUDGMENT. In Practice. The conclusion of law upon facts found, or admitted by the parties, or upon their default in the course of the suit. Tidd, Pr. 930; 32 Md. 147.

The decision on sentenee of the law, given by a court of justice or other competent tribunal, as the result of proceedings instituted therein for the redress of an injury. 3 Bla. Com. 395; 12 Minn. 437. It is said to be the end of the law; 51 Penn. 373.

Judgment of cassetur breve or *billa* (that the writ or bill be quashed) is a judgment rendered in favor of a party pleading in abatement to a writ or action. Steph. Pl. 130, 131.

Judgment by confession is a judgment entered for the plaintiff in case the defendant, instead of entering a plea, confesses the action, or at any time before trial confesses the action and withdraws his plea and other allegations.

Contradictory judgment is a judgment which has been given after the parties have been heard either in support of their claims or in their defence. 11 La. 366. It is used in Louisiana to distinguish such judgments from those rendered by default.

Judgment by default is a judgment rendered in consequence of the non-appearance of the defendant.

Judgment in error is a judgment rendered by a court of error on a record sent up from an inferior court.

Final judgment is one which puts an end to a suit.

Interlocutory judgment is one given in the progress of a cause upon some plea, proceeding, or default which is only intermediate and does not finally determine or complete the suit. 3 Bla. Com. 396.

Judgment of nil capiat per breve or *per billam* is a judgment in favor of the defendant upon an issue raised upon a declaration or peremptory plea.

Judgment by nil dicit is one rendered against a defendant for want of a plea.

Judgment of nolle prosequi is a judgment entered against the plaintiff where after appearance and before judgment he says "he will not further prosecute his suit." Steph. Pl. 130.

Judgment of non obstante veredicto is a judgment rendered in favor of one party *without regard to the verdict* obtained by the other party.

Judgment of non pros. (non prosequitur) is one given against the plaintiff for a neglect to take any of those steps which it is incumbent on him to take in due time.

Judgment by non sum informatus is one which is rendered when, instead of entering a plea, the defendant's attorney says he is not informed of any answer to be given to the action. Steph. Pl. 130.

Judgment of non suit, a judgment rendered against the plaintiff when he, on trial by jury, on being called or demanded, at the instance of the defendant, to be present while the jury give their verdict, fails to make an appearance.

Judgment pro retorno habendo is a judgment that the party have a return of the goods.

Judgment quod computet is a judgment in an action of account-render that the defendant do account.

Judgment quod partitio fiat is the interlocutory judgment in a writ of partition that partition be made.

Judgment quod partes replacitent is a judgment for repleader. See REPLEADER.

Judgment quod recuperet is a judgment in favor of the plaintiff (that he do recover) rendered when he has prevailed upon an issue in fact or an issue in law other than one arising on a dilatory plea. Steph. Pl. 126.

Judgment of respondeat ouster is a judgment given against the defendant after he has failed to establish a dilatory plea upon which an issue in law has been raised.

Judgment of retraxit is one given against

the plaintiff where, after appearance and before judgment, the plaintiff enters upon the record that he "withdraws his suit."

Judgments upon facts found are the following. Judgment of *nul tiel record* occurs when some pleading denies the existence of a record, and issue is joined thereon; the record being produced is compared by the court with the statement in the pleading which alleges it; and if they correspond, the party asserting its existence obtains judgment; if they do not correspond, the other party obtains judgment of *nul tiel record*. Judgment upon *verdict* is the most usual of the judgments upon facts found, and is for the party obtaining the verdict. *Judgment non obstante veredicto* is a judgment rendered in favor of the plaintiff *notwithstanding the verdict* for the defendant: this judgment is given upon motion (which can only be made by the plaintiff) when, upon an examination of the whole proceedings, it appears to the court that the defendant has shown himself to be in the wrong, and that the issue, though decided in his favor by the jury, is on a point which does not at all better his case; Smith, Actions, 161. This is called a judgment upon confession, because it occurs after a pleading by defendant in confession and avoidance and issue joined thereon, and verdict found for defendant, and then it appears that the pleading was bad in law and might have been demurred to on that ground. The plea being substantially bad in law, of course the verdict which merely shows it to be true in point of fact cannot avail to entitle the defendant to judgment; while, on the other hand, the plea being in confession and avoidance involves a confession of the plaintiff's declaration, and shows that he was entitled to maintain his action. Sometimes it may be expedient for the plaintiff to move for judgment *non obstante veredicto* even though the verdict be in his favor; for, in a case like that described above, if he takes judgment *as upon the verdict* it seems that such judgment would be erroneous, and that the only safe course is to take it *as upon confession;* 1 Wils. 63; Cro. Eliz. 778; 2 Rolle, Abr. 99; 1 Bingh. N. C. 767. See, also, Cro. Eliz. 214; 6 Mod. 10; Str. 394; 1 Ld. Raym. 641; 8 Taunt. 413; Rastell, Ent. 622; 1 Wend. 307; 5 *id.* 513; 6 Cow. 225. A judgment of *repleader* is given when issue is joined on an immaterial point, or one on which the court cannot give a judgment which will determine the right. On the award of a repleader, the parties must recommence their pleadings at the point where the immaterial issue originated. See REPLEADER. This judgment is interlocutory, *quod partes replacitent.* See Bacon, Abr. *Pleas*, 4 (M); 3 Hayw. 159.

Judgments upon facts admitted by the parties are as follows. Judgment upon a *demurrer* against the party demurring concludes him, because by demurring a party admits the facts alleged in the pleadings of his adversary, and relies on their insufficiency in law. It sometimes happens that though the adverse parties are agreed as to the facts, and only differ as to the law arising out of them, still these facts do not so clearly appear on the pleadings as to enable them to obtain the opinion of the court by way of *demurrer;* for on demurrer the court can look at nothing whatever except the pleadings. In such circumstances the statute 3 & 4 Will. IV. c. 42, § 25, which has been imitated in most of the states, allows them after issue joined, and on obtaining the consent of a single judge, to state the facts in a *special case* for the opinion of the court, and agree that a judgment shall be entered for the plaintiff or defendant by *confession* or *nolle prosequi* immediately after the decision of the case; and judgment is entered accordingly. Sometimes *at the trial* the parties find that they agree on the facts, and the only question is one of law. In such case a verdict *pro forma* is taken, which is a species of admission by the parties, and is *general*, where the jury find for the plaintiff generally but subject to the opinion of the court on a *special case*, or *special*, where they state the facts as they find them, concluding that the opinion of the court shall decide in whose favor the verdict shall be, and that they assess the damages accordingly. The judgments in these cases are called, respectively, judgment on *a case stated*, judgment *on a general verdict subject to a special case*, and judgment *on a special verdict.*

Besides these, a judgment may be based upon the admissions or confessions of one only of the parties. Such judgments when for defendant upon the admissions of the plaintiff are: Judgment of *nolle prosequi*, where, after appearance and before judgment, the plaintiff says he "will not further prosecute his suit." Judgment of *retraxit* is one where, after appearance and before judgment, the plaintiff enters upon the record that he "withdraws his suit," whereupon judgment is rendered against him. The difference between these is that a *retraxit* is a bar to any future action for the same cause; while a *nolle prosequi* is not, unless made after judgment; 7 Bingh. 716; 1 Wms. Saund. 207, n. A plaintiff sometimes, when he finds he has misconceived his action, obtains leave from the court to *discontinue*, on which there is a judgment against him and he has to pay costs; but he may commence a new action for the same cause. A *stet processus* is entered where it is agreed by leave of the court that all further proceedings shall be stayed: though in form a judgment for the defendant, it is generally, like discontinuance, in point of fact for the benefit of the plaintiff, and entered on his application, as, for instance, when the defendant has become insolvent, it does not carry costs; Smith, Actions, 162, 163.

Judgments for the plaintiff upon facts admitted by the defendant are judgment by *cognovit actionem*, *cognovit* or confession, where, instead of entering a plea, the defendant chooses to acknowledge the rightfulness of the plaintiff's action; or by confession *relicta verificatione*, where, after pleading and before trial, he both confesses the plaintiff's cause of action to be just and true and withdraws, or abandons, his plea or other allegations. Upon this, judgment is entered against him without proceeding to trial.

Analogous to this is the judgment confessed by warrant of attorney: this is an authority given by the debtor to an attorney named by the creditor, empowering him to confess judgment either by *cognovit actionem*, *nil dicit*, or *non sum informatus*. This differs from a *cognovit* in that an action must be commenced before a *cognovit* can be given; 3 Dowl. 278, *per Parke*, B.; but not before the execution of a warrant of attorney. Judgments by *nil dicit* and *non sum informatus*, though they are in fact founded upon a tacit acknowledgment on the part of the defendant that he has no defence to the plaintiff's action, yet as they are commonly reckoned among the judgments by default, they will be explained under that head.

A judgment is rendered on the default of a party, on two grounds: it is considered that the failure of the party to proceed is an admission that he, if plaintiff, has no just cause of action, or, if defendant, has no good defence; and it is

intended as a penalty for his neglect; for which reason, when such judgment is set aside or opened at the instance of the defaulting party, the court generally require him to pay costs. Judgment *by default* is against the defendant when he has failed to appear after being served with the writ; to plead, after being ruled so to do, or, in Pennsylvania and some other states, to file an affidavit of defence within the prescribed time; or, generally, to take any step in the cause incumbent on him. Judgment by *non sum informatus* is a species of judgment by default, where, instead of entering a plea, the defendant's attorney says he is "not informed" of any answer to be given to the action. Judgment by *nil dicit* is rendered against the defendant where, after being ruled to plead, he neglects to do so within the time specified.

Judgment of *non pros.* (from *non prosequitur*) is one given against the plaintiff for a neglect to take any of those steps which it is incumbent on him to take in due time. Judgment of *non suit*, (from *non sequitur*, or *ne suit pas*) is where the plaintiff, after giving in his evidence, finds that it will not sustain his case, and therefore voluntarily makes default by absenting himself when he is called on to hear the verdict. The court gives judgment against him for this default; but the proceeding is really for his benefit, because after a nonsuit he can institute another action for the same cause, which is not the case—except in ejectment, in some states—after a verdict and judgment against him. It follows that at common law the plaintiff cannot be nonsuited against his will; for a party cannot be compelled to make default. But in Pennsylvania, by statute, the plaintiff may be nonsuited compulsorily. This may be done in two cases: 1, under the act of March 11, 1836, when the defendant has offered no evidence, and the plaintiff's evidence is not sufficient in law to maintain his action; 2, under the act of April 14, 1846, confined to Philadelphia, when the cause is reached and the plaintiff or his counsel does not appear, or, if he appears, does not proceed to trial, and does not assign and prove a sufficient legal cause for continuance.

The formality of calling the plaintiff when he is to suffer a nonsuit is obsolete in most of the states.

In England, when the plaintiff neglects to carry down the record to the assizes for trial, the defendant is empowered by stat. Geo. II. c. 17, to move for judgment *as in case of nonsuit*, which the court may either grant, or may, upon just and reasonable terms, allow the plaintiff further time to try the issue.

Interlocutory judgments are such as are given in the middle of a cause upon some plea, proceeding, or default which is only intermediate, and does not finally determine or complete the suit. Any judgment leaving something to be done by the court, before the rights of the parties are determined, and not putting an end to the action in which it is entered, is interlocutory; Freem. Judg. § 12; 3 Bla. Com. 396. Such is a judgment for the plaintiff upon a plea in abatement, which merely decides that the cause must proceed and the defendant put in a better plea. But, in the ordinary sense, interlocutory judgments are those incomplete judgments whereby the right of the plaintiff is indeed established, but the *quantum* of damages sustained by him is not ascertained. This can only be the case where the plaintiff recovers; for judgment for the defendant is always complete as well as final. The interlocutory judgments of most common occurrence are where a demurrer has been determined for the plaintiff, or the defendant has made default, or has by *cognovit actionem* acknowledged the plaintiff's demand to be just. After interlocutory judgment in such case, the plaintiff must ordinarily take out a *writ of inquiry*, which is addressed to the sheriff, commanding him to summon a jury and assess the damages, and upon the return of the writ of inquiry final judgment may be entered for the amount ascertained by the jury. It is not always necessary to have a writ of inquiry upon interlocutory judgment; for it is said that "this is a mere inquest of office to inform the conscience of the court, who, if they please, may themselves assess the damages." 3 Wils. 62, *per Wilmot*, C. J.; and accordingly, if the damages are matter of mere computation, as, for instance, interest upon a bill of exchange or promissory note, it is usual for the court to refer it to the master or prothonotary, to ascertain what is due for principal, interest, and costs, whose report supersedes the necessity of a writ of inquiry; 4 Term, 275; 1 H. Blackst. 541; 4 Price, 134. But in actions where a specific thing is sued for, as in actions of debt for a sum certain, the judgment upon demurrer, default, or confession is not interlocutory, but is absolutely complete and final in the first instance.

Final judgments are such as at once put an end to the action by determining the right and fixing the amount in dispute. Such are a judgment for defendant at any stage of the suit, a judgment for plaintiff after verdict, a judgment for a specific amount confessed upon warrant of attorney, and a judgment signed upon the return of a writ of inquiry, or upon the assessment of damages by the master or prothonotary. Judgment for plaintiff is final also in an action brought for a specific sum, as debt for a sum certain, although entered upon a demurrer or default, because here, the *amount* being ascertained at the outset, the only question at issue is that respecting the right, and when that is determined nothing remains to be done.

When an issue in *fact*, or an issue in *law* arising on a peremptory plea, is determined for the plaintiff, the judgment is "that the plaintiff do recover, etc., which is called a judgment *quod recuperet;* Steph. Pl. 126; Comyn, Dig. *Abatement* (I 14, I 15); 2 Archb. Pr. 3. When the issue in law arises on a dilatory plea, and is determined for the plaintiff, the judgment is only that the defendant "do answer over," called a judgment of *respondeat ouster*. In an action of *account*, judgment for the plaintiff is that the defendant "do account," *quod computet*. Of these, the last two, *quod computet* and *quod respondeat ouster*, are interlocutory only; the first, *quod recuperet*, is either final or interlocutory according as the *quantum* of damages is or is not ascertained at the rendition of the judgment.

Judgment in error is either in affirmance of the former judgment; in recall of it for error in fact; in reversal of it for error in law; that the plaintiff be barred of his writ of error, where a plea of release of errors or of the statute of limitations is found for the defendant; or that there be a *venire facias de novo*, which is an award of a new trial; Smith, Actions, 196. A *venire facias de novo* will always be awarded when the plaintiff's declaration contains a good cause of action, and judgment in his favor is reversed by the court of error; 24 Penn. 470. In general, however, when judgment is *reversed*, the court of error not merely overturns the decision of the court below, but will give such a judgment as the court below ought to have given; Smith, Actions, 196.

REQUISITES OF. To be valid, a judicial judgment must be given by a competent judge

or court, at a time and place appointed by law, and in the form it requires. A judgment would be null if the judge had not jurisdiction of the matter, or, having such jurisdiction, he exercised it when there was no court held, or out of his district, or if he rendered a judgment before the cause was prepared for a hearing.

The judgment must confine itself to the question raised before the court, and cannot extend beyond it. For example, where the plaintiff sues for an injury committed on his lands by animals owned and kept carelessly by defendant, the judgment may be for damages, but it cannot command the defendant for the future to keep his cattle out of the plaintiff's land. That would be to usurp the power of the legislature. A judgment declares the rights which belong to the citizen, the law alone rules future actions. The law commands all men, it is the same for all, because it is general; judgments are particular decisions, which apply only to particular persons, and bind no others; they vary like the circumstances on which they are founded.

Effect of. Final judgments are commonly said to conclude the parties; and this is true in general, but does not apply to judgments for defendant on *non suit*, as in case of *non suit* by *nolle prosequi*, and the like, which are final judgments in one sense, because they put an end to all proceedings in the suit, but which nevertheless do not debar the plaintiff from instituting another suit for the same cause. With this qualification, the rule as to the effect of a judgment is as follows. The judgment of a court of concurrent jurisdiction directly upon the point is, as a plea, a bar, or, as evidence, conclusive, between the same parties upon the same matter directly in question in another court. The judgment of a court of exclusive jurisdiction directly upon the point is in like manner conclusive upon the same matter, between the same parties, coming incidentally in question in another court for a different purpose. But neither the judgment of a concurrent nor exclusive jurisdiction is evidence of any matter which came collaterally in question, though within their jurisdiction, nor of any matter incidentally cognizable, nor of any matter to be inferred by argument from the judgment. Duchess of Kingston's case, 20 Howell, St. Tr. 538; 2 Smith, Lead. Cas. 424; and see the authorities there cited. See, also, 2 Gall. 229; 4 Watts, 183. The rule above given relates to the effect of a judgment upon proceedings in another court; if the court is the same, of course the rule holds *a fortiori*. Moreover, all persons who are represented by the parties, and claim under them or in privity with them, are equally concluded by the proceedings. All privies whatever in estate, in blood, or in law, are, therefore, estopped from litigating that which is conclusive upon him with whom they are in privity; 1 Greenl. Ev. §§ 523, 536.

A further rule as to the conclusiveness of judgments is sometimes stated thus: "a judgment of a court of competent jurisdiction cannot be impeached or set aside in any *collateral* proceeding except on the ground of fraud." See, generally, 1 Greenl. Ev. pt. 3, ch. 5, and the authorities there cited.

This does not prevent a judgment from being attached *directly* by writ of error or other proceeding in the nature of an appeal; and its validity may be impeached in other *direct* proceedings, as by motion to open or set it aside, and in contests between creditors in regard to the validity of their respective judgments; in this latter class of cases the court will sometimes award a feigned issue to try questions of fact affecting the validity of the judgment.

If the record of a judgment show that it was rendered without service of process or appearance of the defendant, or if that fact can be shown without contradicting the recitals of the record, it will be treated as void in any other state; 97 Mass. 538; 46 N. Y. 30; s. c. 7 Am. Rep. 299; 48 Ga. 50; s. c. 15 Am. Rep. 660. But this fact cannot be shown in contradiction of the recitals of the record; 17 Vt. 302; 2 McLean, 511; 65 Penn. 105; *contra*, 46 N. Y. 30; 24 Tex. 551; 18 Wall. 457. See Cooley, Const. Lim. 22.

Matters of defence arising since the judgment may be taken advantage of by a writ of *audita querela*, or, which is more usual, the court may afford summary relief on motion.

All the judgments, decrees, or other orders of courts, however conclusive in their character, are under the control of the court which pronounced them during the term at which they are rendered or entered of record, and may then be set aside, vacated, or modified by the court, but after the term has ended, unless proceedings to correct the errors alleged have been taken before its close, they can only be corrected by writ of error or appeal, as may be allowed in a court which by law can reverse the decision; 14 Cent. L. J. 250; citing 102 U. S. 107; 9 Wall. 103. To this rule there is an exception founded on the common law writ of *coram nobis*, which brought before the court where the error was committed certain mistakes of fact not put in issue or passed upon by the court, such as the death of one of the parties when the judgment was rendered, coverture if a female party, infancy and failure to appoint a guardian, error in the process, or mistake of the clerk. But if the error was in the judgment itself, the writ did not lie. What was formerly done by this writ in now attained by motion and affidavits when necessary; 14 Cent. L. J. 253; 7 Pet. 147.

As to Form. The form of the judgment varies according to the nature of the action and the circumstances, such as default, verdict, etc., under which it is obtained. Anciently great particularity was required in the entries made upon the judgment roll; but

now, even in the English practice, the drawing up the judgment roll is generally neglected, except in cases where it is absolutely necessary, as where it is desirable to give the proceedings in evidence on some future occasion; Smith, Actions, 169. In this country the roll is rarely if ever drawn up, the simple entry on the trial list and docket, "judgment for plaintiff," or "judgment for defendant," being all that is generally considered necessary; and though the formal entries are in theory still required to constitute a complete record, yet if such record should subsequently be needed for any purpose, it may be made up after any length of time from the skeleton entries upon the docket and trial list. See 11 Penn. 399. When the record is thus drawn up in full, the ancient formalities must be observed, at least in a measure.

Judgments on Verdict.

In *account*, judgment for the plaintiff is interlocutory in the first instance, that the defendant *do account, quod computet;* 4 Wash. C. C. 84; 2 Watts, 95; 1 Penn. 138.

In *assumpsit*, judgment for the plaintiff is that he recover the damages assessed by the jury, and full costs of suit; 1 Chitty, Pl. 100. Judgment for the defendant is that he recover his costs. For the form, see Tidd, Pr. *Forms*, 165.

In *case*, *trover*, and *trespass*, the judgment is the same in substance, and differs but slightly in form from that of assumpsit; 1 Chitty, Pl. 100, 147.

A judgment in trover passes title to the goods in question; 4 Cent. Cas. 88; but only where the value of the thing converted is included in the judgment; 5 H. & N. 288; *contra*, that an unsatisfied judgment does not pass the property; L. R. 6 C. P. 584; 3 Wall. 1, 16; but see 1 Rawle, 121.

In *covenant*, judgment for the plaintiff is that he recover the amount of his damages as found which he has sustained by reason of the breach or breaches of the defendant's covenant, together with costs of suit; 1 Chitty, Pl. 116, 117. Judgment for defendant is for costs.

In *debt*, judgment for the plaintiff is that he recover his debt, and, in general, nominal damages for the detention thereof; and in cases under the 8th & 9th Will. III. c. 11, for successive breaches of a bond conditioned for the performance of a covenant, it is also awarded that he have execution for such damages, and likewise full costs of suit; 1 Chitty, Pl. 108, 109. But in some penal and other actions the plaintiff does not always recover costs; Esp. Pen. Act. 154; Hull, Costs, 200; Bull. N. P. 333; 5 Johns. 251. Judgment for defendant is generally for costs; but in certain penal actions neither party can recover costs; 5 Johns. 251. See the form, Tidd, Pr. *Forms*, 176.

In *detinue*, judgment for the plaintiff is in the alternative that he recover the goods or the value thereof if he cannot have the goods themselves, with damages for the detention, and costs; 1 Chitty, Pl. 121, 122; 1 Dall. 458. See the form, Tidd, Pr. *Forms*, 187.

Executor. If judgment in any of the above personal actions is against the defendant in the character of executor, it confines the liability of the defendant for the debt or damages to the amount of assets of the testator in his hands, but leaves him personally liable for costs. See the form, Tidd, Pr. *Forms*, 168. If the executor defendant has pleaded *plene administravit*, judgment against him confines his liability to such amount of the assets as shall hereafter come to his hands. See the form, Tidd, Pr. *Forms*, 174. A general judgment for costs against an administrator plaintiff is against the estate only.

In *dower*, judgment for demandant is interlocutory in the first instance with the award of a writ of *habere facias seisinam*, and inquiry of damages, on the return of which final judgment is rendered for the value of the land detained, as ascertained by the jury, from the death of the husband to the suing out of the inquisition, and costs of suit. See the form, 3 Chitty, Pl. 583–585.

In *ejectment*, judgment for plaintiff is final in the first instance, that he recover the term, together with the damages assessed by the jury, and the costs of suit, with award of the writ of *habere facias possessionem*, directing the sheriff to put him in possession. See the form, 3 Bla. Com. App. xii.; Tidd, Pr. *Forms*, 188.

In *partition*, judgment for plaintiff is also interlocutory in the first instance; *quod partitio fiat*, with award of the writ *de partitione facienda*, on the return of which final judgment is rendered,—"therefore it is considered that the partition aforesaid be held firm and effectual forever," *quod partitio facta firma et stabilis in perpetuam teneatur;* Co. Litt. 169. See the form, 2 Sell. Pr. 319, 2d ed. 222.

In *replevin*. If the replevin is in the *detinuit, i. e.* where the plaintiff declares that the chattels "were detained until replevied by the sheriff," judgment for plaintiff is that he recover the damages assessed by the jury for the taking and unjust detention, or for the detention only where the taking was justifiable, and also his costs; 5 S. & R. 133; Hamm. N. P. 488. If the replevin is in the *detinet, i. e.* where the plaintiff declares that the chattels taken are "yet detained," the jury in giving a verdict for plaintiff find, in addition to the above, the value of the chattels each separately; for the defendant will perhaps restore some, in which case the plaintiff is to recover the value of the remainder; Hamm. N. P. 489; Fitzh. N. B. 159 *b*; 5 S. & R. 130.

If the replevin be *abated*, the judgment is that the writ or plaint abate, and that the defendant, having avowed, have a return of the chattels.

If the plaintiff is *nonsuited*, the judgment

for defendant, at common law, is that the chattels be restored to him, and that without his first assigning the object of the taking, because by abandoning his suit the plaintiff admits that he had no right to dispossess the defendant by prosecuting the replevin. The form of this judgment is simply "to have a return," *pro retorno habendo*, without adding the words "to hold irreplevisable." Hamm. N. P. 490. For the form of judgments of *nonsuit* under the statutes 21 Hen. VIII. c. 19, and 17 Car. II. c. 7, see Hamm. N. P. 490, 491; 2 Chitty, Pl. 161; 8 Wentw. Pl. 116; 5 S. & R. 132; 1 Saund. 195, n. 3; 2 *id.* 286, n. 5. In these cases the defendant has the option of taking his judgment *pro retorno habendo* at common law; 5 S. & R. 132; 1 Lev. 255; 3 Term, 349.

When the avowant succeeds upon the merits, the common-law judgment is that he "have return irreplevisable;" for it is apparent that he is by law entitled to keep possession of the goods; 5 S. & R. 145; Hamm. N. P. 493; 1 Chitty, Pl. 162. For the form of judgment in such case under the statutes last mentioned, see Hamm. N. P. 494.

After verdict, the general form of judgment for plaintiff in actions on contracts sounding in damages, and in actions founded on *torts* unaccompanied with violence, is this. "Therefore it is considered that the said A B do recover against the said C D his damages aforesaid, and also —— for his said costs and charges, by the court now here adjudged of increase to the said A B, with his assent; which said damages, costs, and charges in the whole amount to ——. And the said C D in mercy, etc." In *debt* for a sum certain, the general form is "—— that the said A B do recover against the said C D his said debt, and also —— for his damages which he has sustained, as well on occasion of detaining the said debt as for his costs and charges by him about his suit in this behalf expended, by the court now here adjudged to the said A B, and with his assent. And the said C D in mercy, etc." In actions founded on *torts* accompanied with violence, the form of judgments for plaintiff is, "—— that the said A B do recover against the said C D his damages aforesaid, and also —— for his said costs and charges by the court now here adjudged of increase to the said A B, and with his consent; which said damages, costs, and charges in the whole amount to ——. And let the said C D be taken, etc."

Final judgment for the defendant is in these words: "Therefore it is considered that the said A B take nothing by his writ, but that he be in mercy, etc. (*or* that he and his pledges to prosecute be in mercy, etc.), and that the said C D do go thereof without day, etc. And it is further considered ——." Then follows the award of costs and of execution therefor. See Tidd, Pr. *Forms*, 189.

This is the general form of judgment for defendant, whether it arise upon interlocutory proceedings or upon verdict, and whatever be the form of action. This is sometimes called judgment of *nil capiat per breve* or *per billam;* Steph. Pl. 128.

The words "and the said —— in mercy, etc.," or, as expressed in Latin, *quod sit in misericordia pro falso clamore suo*, were formerly an operative part of the judgment, it being an invariable rule of the common law that the party who lost his cause was punished by amercement for having unjustly asserted or resisted the claim. And on this account pledges of prosecution were required of the plaintiff before the return of the original, who were real and responsible persons and liable for these amercements. But afterwards the amercements ceased to be exacted. —perhaps because the payment of costs took their place,—and, this portion of the judgment becoming mere matter of form, the pledges returned were the fictitious names John Doe and Richard Roe. Bacon, Abr. *Fines, etc.* (C 1); 1 Ld. Raym. 273, 274.

The words "and let the said —— be taken," in Latin, *capiatur pro fine*, which occur above in the form of judgment in actions founded on torts accompanied with violence, were operative at common law, because formerly a defendant adjudged to have committed a civil injury with actual violence was obliged to pay a fine to the king for the breach of the peace implied in the act, and was liable to be arrested and imprisoned till the fine was paid. This was abolished by stat. 5 W. & M. c. 12; but the form was still retained in entering judgment against defendant in such actions. See Gould, Pl. §§ 38, 82; Bacon, Abr. *Fines, etc.* (C 1); 1 Ld. Raym. 273, 274; Style, 346.

These are called, respectively, judgments of *misericordia* and of *capiatur*.

Judgments in other cases. On a *plea in abatement*, either party may demur to the pleading of his adversary or they may join issue. On demurrer, judgment for the plaintiff is that the defendant have another day to plead in chief, or, as it is commonly expressed, that he answer over: *quod respondeat ouster;* and judgment for defendant is that the writ be quashed: *quod cassetur billa* or *breve*. But if issue be joined, judgment for plaintiff is *quod recuperet*, that he recover his debt or damages, and not *quod respondeat;* judgment for defendant is the same as in the case of demurrer, that the writ be quashed. But the plaintiff may admit the validity of the plea in abatement, and may himself pray that his bill or writ may be quashed, *quod cassetur billa* or *breve*, in order that he may afterwards sue or exhibit a better one; Steph. Pl. 128, 130, 131; Lawes, Civ. Pl. See the form, Tidd, Pr. *Forms*, 195.

Judgment on *demurrer* in other cases, when for the plaintiff is interlocutory in *assumpsit* and actions sounding in damages, and recites that the pleading to which exception was taken by defendant appears sufficient in law, and that the plaintiff ought therefore to recover; but the amount of damages being

unknown, a court of inquiry is awarded to ascertain them. See the form, Tidd, Pr. *Forms*, 181. In *debt* it is final in the first instance. See the form, *id.* pp. 181, 182. Judgment on demurrer when for the defendant is always final in the first instance, and is for costs only. See the form, *id.* 195, 196.

Judgment by default, whether by *nil dicit* or *non sum informatus*, is in these words, in assumpsit or other actions for damages, after stating the default: "wherefore the said A B ought to recover against the said C D his damages on occasion of the premises; but because it is unknown to the court, etc., now here what damages the said A B hath sustained by means of the premises, the sheriff is commanded, etc." Then follows the award of the writ of inquiry, on the return of which final judgment is signed. See the forms, Tidd. Pr. *Forms*, 165–169. In debt for a sum certain, as on a bond for the payment of a sum of money, the judgment on default is final in the first instance, no writ of inquiry being necessary. See the form, *id.* 169, 170.

Judgment by *cognovit actionem* is for the amount admitted to be due, with costs, as on a verdict. See the form, *id.* 176.

Judgment of *non pros.* or *non suit* is final, and is for defendant's costs only, which is also the case with judgment on a *discontinuance* or *nolle prosequi*. See *id.* 189–195.

OF MATTERS OF PRACTICE. *Of docketing the judgment.* By the stat. 4 & 5 W. & M. c. 20, all final judgments are required to be regularly docketed: that is, an abstract of the judgment is to be entered in a book called the judgment-docket; 3 Bla. Com. 398. And in these states the same regulation prevails. Besides this, an index is required to be kept in England of judgments confessed upon warrant of attorney, and of certain other sorts of judgments; 3 Sharsw. Bla. Com. 396, n. In most of the states this index is required to include all judgments. The effect of docketing the judgment is to notify all interested persons, including purchasers or incumbrancers of land upon which the judgment is a lien, and subsequent judgment creditors, of the existence and amount of the judgment. In Pennsylvania, the judgment index is for this purpose conclusive evidence of the amount of a judgment in favor of a purchaser of the land bound thereby, but not against him: if the amount indexed is less than the actual amount, the purchaser is not bound to go beyond the index; but if the amount indexed is too large, he may resort to the judgment-docket to correct the mistake; 1 Penn. 408.

Now, in England, judgments, in order to affect purchasers, mortgagees, and creditors, must be registered in the common pleas, and renewed every five years. See 2 & 3 Vict. c. 11, s. 5.

Of the time of entering the judgment. After verdict a brief interval is allowed to elapse before signing judgment, in order to give the defeated party an opportunity to apply for a new trial, or to move in arrest of judgment, if he is so disposed. This interval, in England, is four days; Smith, Actions, 150. In this country it is generally short; but, being regulated either by statute or by rules of court, it of course may vary in the different states, and even in different courts of the same state.

See ARREST OF JUDGMENT; ASSUMPSIT; ATTACHMENT; CONFLICT OF LAWS; COVENANT; DEBT; DETINUE; EJECTMENT; FOREIGN JUDGMENT; LIEN; REPLEVIN; TRESPASS; TROVER. See Freeman, Judgments.

JUDGMENT NISI. A judgment entered on the return of the nisi prius record with the postea indorsed, which will become absolute according to the terms of the "postea" unless the court out of which the nisi prius record proceeded shall, within the first four days of the following term, otherwise order.

Under the compulsory arbitration law of Pennsylvania, on filing the award of the arbitrators, judgment nisi is to be entered, which judgment is to be valid as if it had been rendered on a verdict of a jury, unless an appeal is entered within the time required by law.

JUDGMENT NOTE. A promissory note given in the usual form, and containing, in addition, a power of attorney to appear and confess judgment for the sum therein named. On this account it is not negotiable; 77 Penn. 131; but see 19 Ohio, 130.

It usually contains a great number of stipulations as to the time of confessing the judgment; 11 Ill. 623; against appeal and other remedies for setting the judgment aside; see 9 Johns. 80; 20 id. 296; 2 Cow. 465; 2 Penn. 501; 15 Ill. 356; and other conditions.

JUDGMENT PAPER. In English Practice. An *incipitur* of the pleadings, written on plain paper, upon which the master will sign judgment. 1 Archb. Pr. 229, 306, 343.

JUDGMENT RECORD. In English Practice. A parchment roll, on which are transcribed the whole proceedings in the cause, deposited and filed of record in the treasury of the court, after signing of judgment. 3 Steph. Com. 632. See JUDGMENT ROLL. In American practice, the record is signed, filed, and docketed by the clerk, all of which is necessary to suing out execution; Graham, Pr. 341.

JUDGMENT ROLL. In English Law. A record made of the issue roll (which see), which, after final judgment has been given in the cause, assumes this name. Steph. Pl. 133; 3 Chitty, Stat. 514; Freem. Judg. § 75. The Judicature Act of 1875 requires every judgment to be entered in a book by the proper officer.

JUDICATURE. The state of those employed in the administration of justice; and in this sense it is nearly synonymous with

judiciary. This term is also used to signify a tribunal; and sometimes it is employed to show the extent of jurisdiction: as, the judicature is upon writs of error, etc. Comyn, Dig. *Parliament* (L 1). And see Comyn, Dig. *Courts* (A).

JUDICATURE ACTS.

The statutes of 36 & 37 Vict. c. 66, and 38 & 39 Vict. c. 77, which went into force Nov. 1, 1875, with amendments in 1877, c. 9, 1879, c. 78, and 1881, c. 68, made most important changes in the organization of, and methods of procedure in, the superior courts of England, consolidating them together so as to constitute one Supreme Court of Judicature, consisting of two divisions: Her Majesty's High Court of Justice, having chiefly original jurisdiction, and Her Majesty's Court of Appeal, whose jurisdiction is chiefly appellate. To the former is transferred the jurisdiction of the courts of chancery, queen's bench, common pleas, exchequer, admiralty, probate, divorce, and the assize court, with certain exceptions, of which the most important is the appellate jurisdiction of the court of appeal in chancery. The London court of bankruptcy was included in this list by the act of 1873, but excluded by that of 1875. To Her Majesty's Court of Appeal is transferred the jurisdiction exercised by the lord chancellor and lords justices of the court of appeal in chancery, the court of exchequer chamber, the judicial committee of the privy council on appeal from the high court of admiralty, or from any order in lunacy made by the lord chancellor, or any other person having jurisdiction in lunacy. By the act of 1873, no appeals were to be brought from the High Court or Court of Appeal to the house of lords or the privy council, but by the Appellate Jurisdiction Act of 39 & 40 Vict. c. 59, the house of lords retains for all practical purposes here, its powers and functions to hear appeals from Her Majesty's Court of Appeal in England, and from the courts of Scotland and Ireland. Her Majesty's Court of Appeal practically takes the place of the exchequer chamber in appeals in common law actions, and also hears appeals in chancery, previously heard by the chancellor or by the court of appeal in chancery, in the exercise of its appellate jurisdiction, and of the same court as a court of appeal in bankruptcy. It consists of five *ex-officio* judges, viz., the lord chancellor as president, the lord chief justice of England, the master of the rolls, the lord chief justice of the common pleas, and the lord chief baron of the exchequer, and six ordinary judges of the court of appeal, to be styled, by the act of 40 & 41 Vict. c. 9, lords justices of appeal, the first three of whom are to be made by the transfer of three judges from the High Court of Justice.

The High Court of Justice consists of five divisions as follows: 1. The chancery division, consisting of the lord chancellor, the master of the rolls (but by the act of 44 & 45 Vict. c. 68, the master of the rolls ceases to belong to the high court, and provision is made for a judge in his place, who shall be in the same position as a puisne judge under the acts of 1873 and 1875) and such of the vice chancellors of the court of chancery as shall not be appointed ordinary judges of the court of appeal. The Judicature Act of 1877, 40 & 41 Vict. c. 9, provides for the appointment of a new judge, to be attached to the chancery division, and entitles the puisne judges, justices of the high court. The lord chancellor is not to be deemed a permanent judge of the High Court of Justice.

2. The queen's bench division, consisting of the lord chief justice of England, and such other of the judges of the court of queen's bench as shall not be appointed ordinary judges of the Court of Appeal.

3. The common pleas division, consisting of the lord chief justice of the common pleas, and such other judges of the court of common pleas as shall not be appointed ordinary judges of the Court of Appeal.

4. The exchequer division, consisting of the lord chief baron of the exchequer, and certain other barons of the court of exchequer.

5. The probate, divorce, and admiralty division, consisting of two judges, one of whom shall be the judge of the court of probate and of the court for divorce and matrimonial causes, and the judge of the high court of admiralty.

Any judge of any of the above divisions may be transferred by her majesty from one to another of the said divisions. Divisional courts of the high courts of justice may be held for the transaction of special business, consisting usually of two judges.

Crown cases reserved are to be heard by the judges of the High Court of Justice, or at least five of them, of whom the lord chief justice of England, the lord chief justice of the common pleas, and the lord chief baron of the exchequer, or one of them, shall be part. Their determination is final, save for some error of law upon the record, as to which no question shall have been reserved for their decision, under 11 & 12 Vict. c. 78.

The reports of adjudicated cases are now arranged thus (see REPORTS):—

Appeal cases. Cases decided by the house of lords and privy council, cited as App. Cas. They are reported with the cases of the division from which the appeal was taken, and are indicated as, "In the court of appeal," or "C. A.;" chancery division, cited as Ch. Div.; common pleas division, cited as C. P. Div.; exchequer division, cited as Ex. Div.

Probate division. Cases decided by the probate, divorce, and admiralty divisions, cited as P. Div.

Queen's bench division, cited as Q. B. Div.

These acts provide for a concurrent administration of legal and equitable remedies, according to seven rules, which substantially provide that any one of the courts, included in the acts, shall give the same equitable relief to any plaintiff or defendant claiming it as would formerly have been granted by chancery; equitable relief will be granted against third persons, not parties, who shall be brought in by notice; all equitable estates, titles, rights, duties, and liabilities, will be taken notice of as in chancery; no proceeding shall be restrained by injunction, but every matter of equity on which an injunction might formerly have been obtained, may be relied on by way of defence, and the courts may in any cause direct a stay of proceedings. Subject to these and certain other provisions of the act, effect shall be given to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities, existing by the common law, custom, or statute, as before the acts; the new courts shall grant, either absolutely or on terms, all such legal or equitable remedies as the parties may appear entitled to; so that all matters may be completely and finally determined, and multiplicity of legal proceedings avoided.

Eleven new rules of law are established, which will be found in the act of 1873, c. 66, § 25, of the following nature: 1. In the administration of insolvent estates, the same rules shall prevail as may be in force under the law of bankruptcy;

2. No claim of a *cestui que* trust against his trustee, for property held on an express trust, shall be barred by any statute of limitations; 3. A tenant for life shall have no right to commit equitable waste, unless such right is expressly conferred by the instrument creating the estate; 4. There shall be no merger by operation of law only, of any estate, the beneficial interest in which would not be deemed merged in equity; 5. A mortgagor entitled for the time being to the possession of the profits of land, as to which the mortgagee shall have given no notice of his intention to take possession, may sue for such possession, or for the recovery of such profits, or to prevent or recover damages in respect of any trespass, or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made jointly with any other person; 6. Any absolute assignment of a chose in action, of which express notice in writing shall have been given to the debtor, shall pass the legal right thereto from the date of notice, and all remedies for the same, and the power to give a good discharge: provided, that if the debtor, etc., shall have had notice of any conflicting claims to such debt, he shall be entitled to call upon such claimants to interplead; 7. Stipulations as to time or otherwise, which would not have been deemed of the essence of the contract in equity, shall receive the same construction as formerly in equity; 8. A mandamus or an injunction may be granted, or a receiver appointed by an interlocutory order, which may be made either unconditionally or on terms; and an injunction may be granted to prevent threatened waste or trespass, whether the estates be legal or equitable, or whether the person against whom the injunction is sought is or is not in possession under any claim of title, or does or does not claim a right to do the act sought to be restrained under color of title; 9. In proceedings arising from collisions at sea, where both ships are in fault, the rules hitherto in force in the court of admiralty shall prevail; 10. In questions relating to the custody of infants, the rules of equity shall prevail; 11. Generally, in all matters in which there is any conflict between the rules of common law and the rules of equity, the latter shall prevail.

The division of the legal year into terms is abolished, so far as relates to the administration of justice, but where they are used as a measure for determining the time at or within which any act is required to be done, they may continue to be referred to. Numerous other regulations are established for the arrangement of business, and course of procedure under the new system, for which reference must be had to the acts. We will merely note that nothing is to affect the law relating to jury trials, and the existing forms of procedure are to be used as far as consistent with these acts. Nothing shall affect the practice or procedure in—1. Criminal proceedings; 2. Proceedings on the crown side of the queen's bench division; 3. Proceedings on the revenue side of the exchequer division; 4. Proceedings for divorce and matrimonial causes. The Chancery Procedure Acts and the Common Law Procedure Acts remain in full force, except so far as impliedly or expressly repealed by the Judicature Acts. Many sections of the C. L. P. Acts are repealed by the act of 1879, c. 78, and by the Civil Procedure Acts Repeal Act of 1879, c. 59. See Moz. & W.; preface to 15 Eng. Rep. by N. C. Moak, and the several articles on the Courts of England.

JUDICATURE ACTS (IRELAND). The act of 40 & 41 Vict. c. 57, which went into operation Jan. 1, 1878, established a supreme court of judicature in Ireland, essentially similar in its constitution to that in England. Amended by 41 & 42 Vict. c. 27.

JUDICES PEDANEOS (Lat.). **In Roman Law.** Judges chosen by the parties.

Among the Romans, the prætors and other great magistrates did not themselves decide the actions which arose between private individuals: these were submitted to judges chosen by the parties, and these judges were called *judices pedaneos*. In choosing them, the plaintiff had the right to nominate, and the defendant to accept or reject those nominated. Heineccius, Antiq. lib. 4, tit. b. n. 40; 7 Toullier, n. 353.

JUDICIAL ADMISSIONS. Admissions of the party which appear of record in the proceedings of the court.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL. In English Law. A tribunal formerly composed of members of the privy council, established by 2 & 3 Wm. IV. c. 92, and subsequent acts, for hearing appeals from colonial and ecclesiastical courts and the courts of admiralty, and from certain orders in lunacy. By 34 & 35 Vict. c. 91, provision was made for the appointment of four additional members; no one was qualified who was not when appointed, or had not been a judge of the superior courts at Westminster, or a chief justice of the High Court in Calcutta, Madras, or Bombay.

The Judicature Act (*q. v.*) transferred the jurisdiction in admiralty and lunacy appeals to the Court of Appeal. The same act provided for the transfer to the same court of all appeals to the Queen in Council. But by the judicature act of 1875, the operation of this provision was postponed, and an Order in Council will be necessary to give effect to it. Mozl. & W.; Whart. Dict. See PRIVY COUNCIL.

JUDICIAL CONFESSIONS. In Criminal Law. Those voluntarily made before a magistrate, or in a court, in the due course of legal proceedings. A preliminary examination, taken in writing, by a magistrate lawfully authorized, pursuant to a statute, or the plea of guilty made in open court to an indictment, are sufficient to found a conviction upon them.

JUDICIAL CONVENTIONS. Agreements entered into in consequence of an order of court; as, for example, entering into a bond on taking out a writ of sequestration. 6 Mart. La. N. S. 494.

JUDICIAL DECISIONS. The opinions or determinations of the judges in causes before them. Hale, Hist. Cr. Law, 68; Willes, 666; 3 B. & Ald. 122; 1 H. Blackst. 63; 5 Maule & S. 185. See DICTUM.

JUDICIAL LIABILITY. See JUDGE; 6 Am. Dec. 333.

JUDICIAL MORTGAGE. In Louisiana. The lien resulting from judgments, whether these be rendered on contested cases, or by default, whether they be final or provisional, in favor of the person obtaining them. La. Civ. Code, art. 3289.

JUDICIAL NOTICE. Courts of justice take judicial notice of certain facts, and no evidence of any fact of which the court will take such notice need be given by the party alleging its existence. The judge, if a case arise, may, if unacquainted with such fact, refer to any person, or any document, or book of reference for his satisfaction in relation thereto; or may refuse to take judicial notice thereof unless and until the party calling upon him to take such notice, produces any such document or book of reference. Steph. Ev., art. 59. The following classification of the subject has been made by Mr. May in his edition of Stephen's Evidence.

Courts will take judicial notice of:—

The existence and titles of all the sovereign powers in the civilized world which are recognized by the government of the United States, their respective flags and seals of state; 7 Wheat. 610, 634; *id.* 273, 335; L. R. 2 Ch. App. 585. The law of nations; 14 Wall. 170, 188; the general usages and customs of merchants; 91 U. S. 37; treaties made by the United States with foreign governments, and the public acts and proclamations of those governments and their public authorized agents in carrying such treaties into effect; 9 How. 127, 147.

Foreign admiralty and maritime courts; 4 Cra. 434, 299; and their notaries public; 8 Wheat. 326, 333; and their respective seals.

The constitution, public statutes, and general laws and customs of the Union, and also of their own particular state or territory; 11 How. 663; and the courts of the United States take judicial notice of the laws of the several states applicable to causes depending before them; 12 Wall. 226.

The accession of the chief executive of the nation, and of their own state or territory; his powers and privileges; 33 Miss. 508; 5 Wisc. 308; and the genuineness of his signature; 4 Mart. La. 635; the heads of departments, and principal officers of state; 91 U. S. 37; and the public seals; 2 Halst. 553; 3 Johns. 310; the election or resignation of a senator of the United States; the appointment of a cabinet or foreign minister; 91 U. S. 37; 2 Rob La. 466; marshals and sheriffs; 27 Ala. 17; and the genuineness of their signatures; 10 Mart. La. 196; but not their deputies; 10 Ark. 142; courts of general jurisdiction, their judges; 2 Ohio St. 223; their seals, regular terms, rules, and maxims in the administration of justice and course of proceeding; 10 Pick. 470; 17 Ala. 229.

Public proclamations of war and peace, and of the days of special fast and thanksgiving; stated days of general political elections, the sittings of congress, and also of their own state or territorial legislatures, and their established and usual course of proceeding, the privileges of the members, but not the transactions on the journals; 13 Wall. 154; 6 *id.* 4; *contra* (as to journals), 48 Ala. 115; 13 Mich. 481.

The territorial extent of the jurisdiction and sovereignty exercised *de facto* by their own government; 19 Iowa, 319; and the local political divisions of their own state into counties, cities, townships, and the like; 40 N. H. 420; 22 Me. 453; and their relative positions, but not their boundaries further than described in public statutes; 39 Me. 263, 291; 28 Ind. 429.

The general geographical features of their own country, state, and judicial district, as to the existence and location of its principal mountains, rivers, and cities; 27 Ind. 233; 40 N. H. 420; and also the geographical position and distances of foreign countries and cities in so far as the same may be fairly presumed to be within the knowledge of most persons of ordinary intelligence and education within the state or district where the court is held; 91 U. S. 37; and the courts of the United States especially take judicial notice of the ports and waters of the United States, in which the tide ebbs and flows, and of the boundaries of the several states and judicial districts; 91 U. S. 37.

All things which must have happened according to the ordinary course of nature; as the ordinary limitation of human life as to age, the course of time and of the heavenly bodies, the mutations of the seasons and their general relations to the maturity of the crops; 91 U. S. 37.

The ordinary public fasts and festivals; 4 Md. 409; the coincidence of days of the week with days of the month; 31 Ala. 167. The meaning of words in the vernacular language: but not of catch words, technical, local, or slang expressions; 20 Pick. 206; 15 Md. 276, 484.

Such ordinary abbreviations as by common use may be regarded as universally understood, as abbreviations of Christian names, and the like; 91 U. S. 37; 37 Ala. 216; 13 Mo. 89; but not those which are in any degree doubtful or difficult of interpretation; 8 Texas, 205.

The legal weights, measures; 4 Tenn. 314; and coins; 5 M'Lean, 23; 10 Ind. 536; the character of the general circulating medium, and the public language in reference to it; 3 Monr. 149; but not the current value of the notes of a bank at any particular time; 40 Ala. 391. Any matters of public history affecting the whole people, and also public matters affecting the government of the nation, or of their own particular state or district; 16 How. 416; 91 U. S. 37; 37 Conn. 597.

And finally all matters which may be considered as within the common experience or knowledge of all men; 28 Ala. 83; or which they are directed by any statute to notice.

Judicial notice will also be taken of the period of gestation; 2 East, 202; of the variation of the magnetic needle; 6 Litt. Ky. 91; (but not, it has been held, of the fact that the concentric layers of the trunk of a tree mark its age; 3 Bland, 69;) of general and notorious customs of merchants;

1 Whart. Ev. § 331; if they have been sanctioned by the courts; *ibid.;* and are intelligible without extrinsic proof; 23 Beav. 370; of the custom of the road, as to passing to the right or left; 8 C. & P. 104; and of the customs of the sea, if general and notorious; L. R. 3 P. C. 44.

It has been said that the courts should exercise this power with caution. Care must be taken that the requisite notoriety exists. Every reasonable doubt upon the subject should be solved promptly in the negative. *Per* Swayne, J., in 91 U. S. 43. In that case the court took judicial notice, in a patent case, of the principle of operation of an ice-cream freezer; and the subject of judicial notice was there fully discussed.

See, generally, 2 Cent. L. J. 393, 409; 14 *id.* 114, 125; 5 So. L. Rev. N. S. 214.

JUDICIAL POWER. The authority vested in the judges.

The constitution of the United States declares that "the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish." Art. 3, s. 1.

By the constitutions of the several states, the judicial power is vested in such courts as are enumerated in each respectively. *See the articles on the several states.* There is nothing in the constitution of the United States to forbid or prevent the legislature of a state from exercising judicial functions; 2 Pet. 413; but even in the absence of special limitations in the state constitutions, legislatures cannot exercise powers in their nature essentially judicial; 13 N. Y. 391. The different classes of power have been apportioned to different departments, and as all derive their authority from the same instrument, there is an implied exclusion of each department from exercising the functions conferred upon the others; Cooley, Const. Lim. 106. The legislative power cannot from its nature be assimilated to the judicial; the law is made by the one, and applied by the other; 1 N. H. 204; 10 Wheat. 46; 11 Penn. 494; 19 Ill. 282; 1 Ohio St. 81; 13 N. Y. 391.

A state legislature cannot annul the judgments nor determine the jurisdiction of the courts of the United States; 5 Cra. 115; 2 Dall. 410; nor authoritatively declare what the law is or has been, but what it shall be; 2 Cra. 272; 4 Pick. 23; 3 Mart. La. 248; 10 *id.* 1; 3 Mart. La. N. S. 551; 5 *id.* 519.

JUDICIAL PROCEEDINGS. Proceedings relating to, practised in, or proceeding from, a court of justice.

Conclusive presumptions are made in favor of judicial proceedings. Thus, it is an undoubted rule of pleading that nothing shall be intended to be out of the jurisdiction of a superior court but that which is so expressly alleged; 1 Saund. 74; 10 Q. B. 411, 455–459. So, also, it is presumed, with respect to such writs as are actually issued by the superior courts at Westminster, that they are duly issued, and in a case in which the courts have jurisdiction, unless the contrary appears on the face of them; and all such writs will of themselves, and without any further allegation, protect all officers and others in their aid acting under them; and this, too, although they are on the face of them irregular, or even void in form; 6 Co. 54 *a;* 10 Q. B. 411, 455–459.

The rule is well settled by the authorities, that words spoken in the course of judicial proceedings, though they are such as impute crime to another, and therefore if spoken elsewhere would import malice and be actionable in themselves, are not actionable if they are applicable and pertinent to the subject of inquiry. And this extends not merely to regular courts of justice, but to all inquiries before magistrates, referees, municipal, military, and ecclesiastical bodies; and they are only restrained by this rule, viz., that they shall be made in good faith to courts or tribunals having jurisdiction of the subject, and power to hear and decide the matter of complaint or accusation, and that they are not resorted to as a cloak for private malice. The question, therefore, in such cases is, not whether the words spoken are true, not whether they are actionable in themselves, but whether they were spoken in the course of judicial proceedings, and whether they were relevant and pertinent to the cause or subject of inquiry; Heard, Lib. & S. §§ 101, 102. The rule that no action will lie for words spoken or written in the course of any judicial proceeding, has been acted upon from the earliest times. In 4 Co. 14 *b*, it was adjudged that if one exhibits articles to justices of the peace, "in this case the parties shall not have, for any matter contained in such articles, any action upon the case, for they have pursued the ordinary course of justice in such cases; and if actions should be permitted in such cases, those who have just cause for complaint would not dare to complain, for fear of infinite vexation." And it has been more recently decided, that, though an affidavit made in a judicial proceeding is false, slanderous, and malicious, no action will lie against the party making it; 18 C. B. 126; 4 H. & N. 568.

The general rule is subject to this qualification: that in all cases where the object or occasion of the words or writing is redress for an alleged wrong, or a proceeding in a tribunal or before some individual or associated body of men, such tribunal, individual, or body must be vested with authority to render judgment or make a decision in the case, or to entertain the proceeding, in order to give them the protection of privileged communications. This qualification of the rule runs through all the cases where the question is involved; Heard, Lib. & S. § 104.

Official Records of the States. The constitution provides that full faith and credit

shall be given in each state to the public acts, records, and judicial proceedings of every other state. Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved and the effect thereof. The term records includes all executive, judicial, legislative, and ministerial acts, constituting the public records of the state. The object of this clause was to prevent judgments from being disregarded in other states; 25 Mich. 247; it does not change the nature of a judgment, but places judgments rendered in another state on a different footing from what are known at common law as foreign judgments; 9 Wheat. 1; a judgment rendered in another state is to be regarded as a domestic judgment; 27 Penn. 247; but this includes only judgments in civil actions; not in criminal prosecutions, or in divorce; 17 Mass. 514; 122 *id.* 156; 56 Ind. 263. The judgment of a state court has the same validity and effect in any other state, as it has in the state where it was rendered; 6 Wheat. 129; 9 How. 520. The judicial proceedings within the act are only such as have been rendered by a competent court, with full jurisdiction; 9 Mass. 462; it may be a superior court of record or an inferior tribunal; 30 N. H. 78; 13 Ohio, 209; a judgment may, however, be attacked on the ground of a want of jurisdiction; 18 Wall. 457; thus a judgment against a defendant who was not served with proper process, and who did not appear, would be entitled to no credit in another state; 11 How. 165. The constitution does not give to a judgment all the attributes to which it was entitled in the state where it was rendered; 7 Gill & J. 434; but if duly certified, it is admissible in evidence in any state; 7 Cal. 54, 247; a state may give a judgment rendered in another state any effect it may think proper, always provided it does not derogate from legal effect conferred upon it by the constitution and the laws of congress in this behalf; 9 Mass. 462. In case, however, full faith and credit is not given to the judgment of another state, any judgment based thereon will be invalid; 7 Wall. 139. When the court rendering the judgment had jurisdiction, its judgment is final as to the merits; 5 Wall. 302; 14 Tex. 352; but no greater effect can be given to a judgment than it had in the state where it was rendered; 17 Wall. 529; 18 N. Y. 468.

Legislative acts must be authenticated by the seal of the state; 4 Dall. 412.

JUDICIAL SALE. A sale, by authority of some competent tribunal, by an officer authorized by law for the purpose.

The officer who makes the sale conveys all the rights of the defendant, or other person against whom the process has been issued, in the property sold. Under such a sale there is no warranty, either express or implied, of the thing sold; 9 Wheat. 616. When real estate is sold by the sheriff or marshal, the sale is subject to the confirmation of the court, or it may be set aside. See 4 Wash. C. C. 45, 322. See TAX SALE.

JUDICIAL WRITS. In English Practice. The capias and all other writs subsequent to the original writ not issuing out of chancery, but from the court to which the original was returnable.

Being grounded on what had passed in that court in consequence of the sheriff's return, they are called *judicial* writs, in contradistinction to the writs issued out of chancery, which were called *original* writs; 3 Bla. Com. 282.

JUDICIARY. That which is done while administering justice; the judges taken collectively: as, the liberties of the people are secured by a wise and independent judiciary. See COURTS; 3 Story, Const. b. 3, c. 38.

JUDICIUM DEI (Lat. the judgment or decision of God).

In Old English Law. A term applied to trials by ordeal; for, in all trials of this sort, God was thought to interfere in favor of the innocent, and so decide the cause. These trials are now all abolished.

JUICIO DE APEO. In Spanish Law. The decree of a competent tribunal directing the determining and marking the boundaries of lands or estates.

JUICIO DE CONCURSO DE ACREEDORES. In Spanish Law. The decree obtained by a debtor against his creditors, or by the creditors against their debtor, for the payment of the amount due, according to the respective rank of each creditor, when the property of the debtor is insufficient to pay the whole of his liabilities.

JUNIOR. Younger. This has been held to be no part of a man's name, but an addition by use, and a convenient distinction between a father and son of the same name. 10 Paige, Ch. 170; 7 Johns. 549; 2 Caines, 164; 1 Pick. 388; 15 *id.* 7; 17 *id.* 200; 3 Metc. Mass. 330.

Any matter that distinguishes persons renders the addition of *junior* or *senior* unnecessary; 1 Mod. Ent. 35; Salk. 7. But if father and son have both the same name, the father shall be *primâ facie* intended, if *junior* be not added, or some other matter of distinction; Salk. 7; 6 Co. 20; 11 *id.* 39; Hob. 330. If father and son have the same name and addition, and the former sue the latter, the writ is abatable unless the son have the further addition of junior, or the younger. But if the father be the defendant and the son the plaintiff, there is no need of the further addition of *senior*, or the elder, to the name of the father; 2 Hawk. Pl. Cr. 187; Laws of Women, 380.

JUNIOR BARRISTER. A barrister under the rank of queen's counsel. Moz. & W. Also the junior of two counsel employed on the same side in a case.

JUNIPERUS SABINA (Lat.). **In Medical Jurisprudence.** This plant is commonly called savin.

It is used for lawful purposes in medicine, but too frequently for the criminal purpose of producing abortion, generally endangering the life of the woman. It is usually administered in powder or oil. The dose of oil for lawful purposes, for a grown person, is from two to four drops. Parr, Med. Dict. *Sabina.* Foderé mentions a case where a large dose of powdered savin had been administered to an ignorant girl in the seventh month of her pregnancy, which had no effect on the fœtus. It, however, nearly took the life of the girl. Foderé, tome iv. p. 431. Given in sufficiently large doses, four or six grains, in the form of powder, it kills a dog in a few hours; and even its insertion into a wound has the same effect. 3 Orfila, Traité des Poisons, 42. For a form of indictment for administering savin to a woman quick with child, see 3 Chit. Cr. L. 798. See 1 Beck, Med. Jur. 316.

JURA FISCALIA (Lat.). Rights of the exchequer. 3 Bla. Com. 45.

JURA PERSONARUM (Lat.). **In Civil Law.** Rights which belong to men in their different characters or relations, as father, apprentice, citizen, etc. 1 Sharsw. Bla. Com. 122, n.

JURA IN RE (Lat.). **In Civil Law.** Rights in a thing, as opposed to rights to a thing (*jura ad rem*). Rights in a thing which are not gone upon loss of possession, and which give a right to an action *in rem* against whoever has the possession. These rights are of four kinds: *dominium*, *hereditas*, *servitus*, *pignus*. Heineccius, Elem. Jur. Civ. § 333. See JUS IN RE.

JURA REGALIA (Lat.). Royal rights. 1 Bla. Com. 117, 119, 240; 3 *id.* 45. See 21 & 22 Vict. c. 45.

JURAMENTÆ CORPORALES (Lat.). Corporal oaths, *q. v.*

JURAMENTUM CALUMNIÆ (Lat. oath of calumny). **In Civil and Canon Law.** An oath required of plaintiff and defendant, whether the parties themselves insist on it or not, that they are not influenced in seeking their right by malice, but believe their cause to be just. It was also required of the attorneys and procurators of the parties. Called, also, *jusjurandum* or *sacramentum calumniæ*. Calv. Lex.; Vicat, Voc. Jur. Utr.; Clerke, Pr. tit. 42.

JURAMENTUM JUDICIALE (Lat.). **In Civil Law.** An oath which the judge, of his own accord, defers to either of the parties.

It is of two kinds: *first*, that which the judge defers for the decision of the cause, and which is understood by the general name *juramentum judiciale*, and is sometimes called suppletory oath, *juramentum suppletorium; second*, that which the judge defers in order to fix and determine the amount of the condemnation which he ought to pronounce, and which is called *juramentum in litem*. Pothier, Obl. p. 4, c. 3, s. 3, art. 3.

JURAT. **In Practice.** That part of an affidavit where the officer certifies that the same was "sworn" before him.

The jurat is usually in the following form, viz.: "Sworn and subscribed before me, on the —— day of ——, 1842. J. P., justice of the peace."

In some cases it has been holden that it was essential that the officer should sign the jurat, and that it should contain his addition and official description; 3 Caines, 128; 2 Disn. 472. But see 2 Wend. 283; 6 *id.* 543; 12 *id.* 223; 2 Cow. 552; 2 Johns. 479; 17 Ind. 294; Proff. Not.

An officer in some English corporations, chiefly in certain towns in Kent and Sussex, whose duties are similar to those of aldermen in others; stat. 1 Edw. IV.; 2 & 3 Edw. VI. c. 30; 13 Edw. I. c. 26. An officer in the island of Jersey, of whom there are twelve, members of the royal court, and elected for life; 1 Steph. Com. 101; L. R. 1 P. C. 94–114.

JURATA (Lat.). **In Old English Law.** A jury of twelve men sworn. Especially, a jury of the common law, as distinguished from *the assiza*, or jury established or re-established by stat. Hen. II.

The *jurata*, or common-law jury, was a jury called in to try the cause, upon the prayer of the parties themselves, in cases where a jury was not given by statute Hen. II., and as the jury was not given under the statute of Henry II., the *writ of attaint* provided in that statute would not lie against a *jurata* for false verdict. It was common for the parties to a cause to request that the cause might be decided by the *assiza*, sitting as a *jurata*, in order to save trouble of summoning a new jury, in which case "*cadit assiza et vertitur in juratam*," and the cause is said to be decided *non in modum assizæ*, but *in modum juratæ*. 1 Reeve, Hist. Eng. Law, 335, 336; Glanville, lib. 13, c. 20; Bracton, lib. 3, c. 30. But this distinction has been long obsolete.

Juratæ were divided into: *first*, *jurata dilatoria*, which inquires out offenders against the law, and presents their names, together with their offences, to the judge, and which is of two kinds, *major* and *minor*, according to the extent of its jurisdiction; *second*, *jurata judicaria*, which gives verdict as to the matter of fact in issue, and is of two kinds, *civilis*, in civil causes, and *criminalis*, in criminal causes. Du Cange.

A clause in nisi prius records called the *jury clause*, so named from the word *jurata*, with which its Latin form begins. This entry, *jurata ponitur in respectu*, is abolished. Com. Law Proc. Act, 1852, § 104; Wharton, Law Lex.; 9 Co. 32; 59 Geo. III. c. 46; 4 Bla. Com. 342. Such trials were usually held in churches, in presence of bishops, priests, and secular judges, after three days' fasting, confession, communion, etc. Du Cange.

A certificate placed at the bottom of an affidavit, declaring that the witness has been sworn or affirmed to the truth of the facts therein alleged. Its usual form is, "Sworn (or affirmed) before me, the —— day of ——, 18—." A jurat.

JURATORY CAUTION. A security sometimes taken in Scotch proceedings, when no better can be had, viz.: an inventory of effects given up upon oath, and assigned in security of the sums which may be found due. Bell, Dict.

JURE DIVINO.

By divine right. Divine Right is the name generally given to the theory of government which holds monarchy to be the only legitimate form of government. The monarch and his legitimate heirs being, by divine right, entitled to the sovereignty, cannot forfeit that right by any misconduct, or any period of dispossession. But where the knowledge of the right heir is lost, the usurper, being in possession by the permission of God, is to be obeyed as the true heir. Sir Robert Filmer, the most distinguished exponent of the theory, died about 1650.

JURE PROPINQUITATIS (Lat.). By right of relationship. Co. Litt. 10 *b*.

JURE REPRESENTATIONIS (Lat.). By right of representation. See PER STIRPES. 2 Sharsw. Bla. Com. 219, n. 14, 224.

JURE UXORIS (Lat.). By right of a wife.

JURIDICAL. Relating to administration of justice, or office of a judge. Webster, Dict.

Regular; done in conformity to the laws of the country and the practice which is there observed.

JURIS ET DE JURE (Lat.). Of right and by law. A presumption is said to be *juris et de jure* when it is conclusive, *i. e.* when no evidence will be admitted to rebut it, in contradistinction to a presumption, which is simply *juris*, *i. e.* rebuttable by evidence; 1 Greenl. Ev. § 15, note; Wills, Circ. Ev. 29; Best, Pres. 20, § 17; Best, Ev. 43, § 48.

JURIS ET SEISINÆ CONJUNCTIO (Lat.). The union of seisin, or possession, and the right of possession, forming a complete title. 2 Bla. Com. 199, 311.

JURISCONSULTUS (Lat. skilled in the law). **In Civil Law.** A person who has such knowledge of the laws and customs which prevail in a state as to be able to advise, act, and to secure a person in his dealings. Cicero.

The early jurisconsults gave their opinions gratuitously, and were also employed in drawing up written documents. From Augustus to Adrian, only those allowed by the emperor could be jurisconsults: before and after those emperors, any could be jurisconsults who chose. If their opinion was unanimous, it had the force of law: if not, the prætor could follow which opinion he chose. Vicat, Voc. Jur. Utr.

There were two sects of jurisconsults at Rome, the Proculeians and Labinians. The former were founded by Labeo, and were in favor of innovation; the latter by Capito, and held to the received doctrines. Cushing, Int. Rom. Law. §§ 5, 6.

JURISDICTION (Lat. *jus*, law, *dicere*, to say). The authority by which judicial officers take cognizance of and decide causes. Power to hear and determine a cause. 3 Ohio, 494; 6 Pet. 591. The right of a judge to pronounce a sentence of the law, on a case or issue before him, acquired through due process of law. It includes power to enforce the execution of what is decreed. 9 Johns. 239; 3 Metc. Mass. 460; Thach. 202.

Appellate jurisdiction is that given by appeal from the judgment of another court.

Assistant jurisdiction is that afforded by a court of chancery in aid of a court of law: as, for example, by a bill of discovery, or for the perpetuation of testimony, and the like.

Jurisdiction of the cause is the power over the subject-matter given by the laws of the sovereignty in which the tribunal exists.

Civil jurisdiction is that which exists when the subject-matter is not of a criminal nature.

Criminal jurisdiction is that which exists for the punishment of crimes.

Concurrent jurisdiction is that which is possessed over the same parties or subject matter at the same time by two or more separate tribunals.

Exclusive jurisdiction is that which gives to one tribunal sole power to try the cause.

General jurisdiction is that which extends to a great variety of matters.

Limited jurisdiction (called, also, *special* and *inferior*) is that which extends only to certain specified causes.

Original jurisdiction is that bestowed upon a tribunal in the first instance.

Jurisdiction of the person is that obtained by the appearance of the defendant before the tribunal. 9 Mass. 462.

Territorial jurisdiction is the power of the tribunal considered with reference to the territory within which it is to be exercised. 9 Mass. 462.

Jurisdiction is given by the law; 22 Barb. 323; 3 Tex. 157; and cannot be conferred by consent of the parties; 5 Mich. 331; 3 Iowa, 470; 23 Conn. 112; 2 Ohio St. 223; 11 Ga. 453; 23 Ala. N. S. 155; 34 Me. 223; 4 Cush. 27; 4 Gilm. 131; 6 Ired. 139; 4 Yerg. 579; 3 M'Cord, 280; 12 Miss. 549; see 17 Mo. 258; but a privilege defeating jurisdiction may be waived if the court has jurisdiction over the subject-matter; 4 Ga. 47; 11 *id.* 453; 14 *id.* 589; 6 Tex. 379; 13 Ill. 432; 1 Iowa, 94; 1 Barb. 449; 7 Humphr. 209; 4 Mass. 593; 4 M'Cord. 79; 3 McLean, 587; 4 Wash. C. C. 84; 5 Cra. 288; 8 Wheat. 699; and parties may admit facts which show jurisdiction; 22 Wall. 322.

Jurisdiction given by the law of the sovereignty of the tribunal is held sufficient everywhere, at least as to all property within the sovereignty; 2 Blatchf. 427; 10 Rich. Eq. 19; 27 Mo. 594; 1 R. I. 285; and as to persons of whom process is actually and personally served within the territorial limits of jurisdiction, or who appear and by their pleadings admit jurisdiction; 6 Tex. 275; 4 N. Y. 375; 8 Ga. 83. See 11 Barb. 309. But the appearance of a person on whom no personal service of process has been made, merely to object to the jurisdiction, is not such an admission; 37 N. H. 9; 9 Mass. 462; Hard. 96. And see 2 Sandf. 717. Juris-

diction must be either *of the cause*, which is acquired by exercising powers conferred by law over property within the territorial limits of the sovereignty; or *of the person*, which is acquired by actual service of process or personal appearance of the defendant. The question as to the possession of the former is to be determined according to the law of the sovereignty; Dav. 407; of the latter, as a simple question of fact. See CONFLICT OF LAWS; FOREIGN JUDGMENTS.

A court of general jurisdiction is presumed to be acting within its jurisdiction till the contrary is shown; 10 Ga. 371; 10 Barb. 97; 3 Ill. 269; 13 *id.* 432; 15 Vt. 46; 2 Dev. 431; 4 *id.* 305. A court of limited jurisdiction, or a court acting under special powers, has only the jurisdiction expressly delegated; 27 Ala. N. S. 291; 32 *id.* 227; 26 Mo. 65; 1 Dougl. Mich. 384; 7 Hill, So. C. 39; and it must appear from the record that its acts are within its jurisdiction; 5 Harr. Del. 387; 1 Dutch. 554; 2 Zabr. 356, 396; 2 Ill. 554; 20 *id.* 286; 27 Mo. 101; Hempst. 423; 22 Barb. 323; 28 Miss. 737; 26 Ala. N. S. 568; 5 Ind. 157; 1 Greene, Iowa, 78; 21 Me. 340; 16 Vt. 246; 2 How. 319; unless the legislature, by general or special law, remove this necessity; 24 Ga. 245; 7 Mo. 373; 1 Pet. C. C. 36. See 1 Salk. 414; Bacon, Abr. *Courts* (C, D).

Where one of two courts of concurrent jurisdiction has taken cognizance of a cause, the other will not entertain jurisdiction of the same cause; 1 Grant, Cas. 212; 8 Ohio St. 599; 16 Ohio, 373; 27 Vt. 518; 28 *id.* 470; 25 Barb. 513; 8 Md. 254; 2 Md. Ch. Dec. 42; 4 Tex. 242; 19 Ala. N. S. 438; 1 Fla. 198; 2 Murph. 195; 6 McLean. 355.

Any act of a tribunal beyond its jurisdiction is null and void, and of no effect whatever; 33 Me. 414; 13 Ill. 432; 21 Barb. 9; 26 N. H. 232; whether without its territorial jurisdiction; 21 How. 506; 1 Grant, Cas. 218; 15 Ga. 457; or beyond its powers; 22 Barb. 271; 13 Ill. 432; 1 Strobh. 1; 1 Dougl. Mich. 390; 5 T. B. Monr. 261; 16 Vt. 246. Want of jurisdiction may be taken advantage of by plea in abatement; 18 Ill. 292; 3 Johns. 105; 20 How. 541; see 6 Fla. 724; and must be taken advantage of before making any plea to the merits, if at all, when it arises from formal defects in the process, or when the want is of jurisdiction over the person; 7 Cal. 584; 19 Ark. 241; 17 *id.* 340; 28 Mo. 319; 22 Barb. 323; 6 Cush. 560; 13 Ga. 318; 20 How. 541. See 2 R. I. 450; 30 Ala. N. S. 62. But where the cause of action is not within the jurisdiction granted by law to the tribunal, it will dismiss the suit at any time when the fact is brought to its notice; 22 Barb. 271; 23 Conn. 172; 2 Ohio St. 26; 5 T. B. Monr. 261; 13 Vt. 175; 4 Ill. 133.

It is rarely, if ever, too late to object to the jurisdiction of a court where the want of power to hear and determine appears on the face of the proceedings; *per* Bronson, J., 2 Hill, N. Y. 159. Thus, an appellant from chancery to the court of errors may avail himself in the latter court of an objection to the chancellor's jurisdiction, though it was not made before him, when the objection, if valid, is of such a kind that it could not have been obviated, had it been started at an earlier stage in the proceedings; *id.*

Courts of dernier resort are conclusive judges of their own jurisdiction; 1 Park. Cr. Cas. 360; 1 Bail. 294.

JURISDICTION CLAUSE. In Equity Practice. That part of a bill which is intended to give jurisdiction of the suit to the court, by a general averment that the acts complained of are contrary to equity and tend to the injury of the plaintiff, and that he has no remedy, or not a complete remedy, without the assistance of a court of equity, is called the *jurisdiction clause*. Mitf. Eq. Pl. 43.

This clause is unnecessary; for if the court appear from the bill to have jurisdiction, the bill will be sustained without this clause; and if the court have not jurisdiction, the bill will be dismissed though the clause may be inserted. Story, Eq. Pl. § 34.

JURISPRUDENCE. The science of the law. The practical science of giving a wise interpretation to the laws and making a just application of them to all cases as they arise.

By science, in the first definition, is understood that connection of truths which is founded on principles either evident in themselves or capable of demonstration,—a collection of truths of the same kind, arranged in methodical order. In the latter sense, it is the habit of judging the same questions in the same manner, and by this course of judgments forming precedents. 1 Ayliffe, Pand. 3. See Austin, Amos, Markby, Heron, Phillimore, Lorimer, Lindley, on Jurisprudence.

JURIST. One versed in the science of the law. One skilled in the civil law. One skilled in the law of nations.

JURO. In Spanish Law. A certain pension granted by the king on the public revenues, and more especially on the salt-works, by favor, either in consideration of meritorious services or in return for money loaned the government or obtained by it through forced loans. It is a portion of the yearly revenue of the state, assigned as a rightful indemnity, either in perpetuity or as an annuity.

JUROR (Lat. *juro*, to swear). A man who is sworn or affirmed to serve on a jury.

JURY (Lat. *jurata*, sworn). **In Practice.** A body of men who are sworn to declare the facts of a case as they are proven from the evidence placed before them.

The origin of this venerable institution of the common law is lost in the obscurity of the middle ages. Antiquarians trace it back to an early period of English history; but, if known to the Saxons, it must have existed in a very crude form, and may have been derived by them from

the mode of administering justice by the peers of litigant parties, under the feudal institutions of France, Germany, and the other northern nations of Europe. The ancient ordeals of red-hot iron and boiling water, practised by the Anglo-Saxons to test the innocence of a party accused of crime, gradually gave way to the wager of battle, in the days of the Normans; while this latter mode of trial disappeared in civil cases in the thirteenth century, when Henry II. introduced into the assizes a trial by jury. It is referred to in Magna Charta as an institution existing in England at that time; and its subsequent history is well known. See GRAND ASSIZE; 3 Bla. Com. 349; 1 Reeve, Hist. Eng. Law, 23, 84; Granville, c. 9; Bracton, 155; 11 Am. L. Rev. 24. By common law one of the qualifications of a juryman was that he should be a freeholder: 3 Bla. Com. 361; and this requirement is preserved in many of the United States; 20 Am. L. Reg. N. S. 436, 498.

Trial by jury is guaranteed by the constitution of the United States in all criminal cases except upon impeachments, and in all suits at common law where the subject-matter of the controversy exceeds twenty dollars in value. The right to such a trial is also asserted in many of our state constitutions. It has been held, however, not to be an infringement of the prisoner's constitutional right, where a statute provides that in all criminal prosecutions, the party accused, if he shall so elect, may be tried by the court instead of by a jury; 19 Am. L. Reg. N. S. 111; 5 Ohio St. 57; 30 Mich. 116; see 16 Am. L. Reg. N. S. 705; and that the constitutional provision does not apply to suits against the government; 12 Ct. Cl. 312.

The term "jury" as used in the constitution means twelve competent men, disinterested and impartial, not of kin nor personal dependents of either of the parties, having their homes within the jurisdictional limits of the court; drawn and selected by officers free from all bias in favor of or against either party; duly impanelled, and sworn to render a true verdict, according to the law and the evidence; 11 Nev. 39.

A common jury is one drawn in the usual and regular manner.

A grand jury is a body organized for certain preliminary purposes.

A jury de medietate linguæ is one composed half of aliens and half of denizens.

Such juries might formerly be claimed, both in civil and criminal cases, where the party claiming the privilege was an alien born, by virtue of 28 Edw. III. c. 13. And see 8 Hen. VI. c. 29; 3 Geo. III. c. 25, by which latter statute the right is thought to be taken away in civil cases. See 3 Bla. Com. 360; 4 *id.* 352. A provision of a similar nature, providing for a jury one-half of the nationality of the party claiming the privilege where he is a foreigner, exists in some of the states of the United States.

A petit or traverse jury is a jury who try the question in issue and pass finally upon the truth of the facts in dispute. The term jury is ordinarily applied to this body distinctively.

A special jury is one selected by the assistance of the parties.

This is granted in some cases upon motion and cause shown, under various local provisions. See 33 E. L. & Eq. 406. The method at common law was for the officer to return the names of forty-eight principal freeholders to the prothonotary or proper officer. The attorneys of the respective parties, being present, strike off each twelve names, and from the remaining twenty-four the jury is selected. A similar course is pursued in those states where such juries are allowed. See 3 Sharsw. Bla. Com. 357.

A struck jury is a special jury. See 4 Zabr. 843.

The number of jurors must be twelve: and it is held that the term jury in a constitution imports, *ex vi termini*, twelve men; 6 Metc. 231; 4 Ohio St. 177; 2 Wisc. 22; 3 *id.* 219; whose verdict is to be unanimous; 12 N. Y. 190. See 11 Nev. 39, *supra*.

Qualifications of jurors. Jurors must possess the qualifications which may be prescribed by statute, must be free from any bias caused by relationship to the parties or interest in the matter in dispute, and in criminal cases must not have formed any opinion as to the guilt or innocence of the accused. See CHALLENGE.

The selection of jurors is to be made impartially; and elaborate provisions are made to secure this impartiality. In general, a sufficient number are selected, from among the qualified citizens of the county or district, by the sheriff, or similar executive officer of the court, and, in case of his disqualification, by the coroner, or, in some cases, by still other designated persons. See ELISORS. From among these the requisite number is selected at the time of trial, to whom objection may be made by the parties. See CHALLENGE.

The province of the jury is to determine the truth of the facts in dispute in civil cases, and the guilt or innocence of the person accused in criminal cases. See CHARGE. If they go beyond their province, their verdict may be set aside; 4 Maule & S. 192; 3 B. & C. 357; 2 Price, 282; 2 Cow. 479; 10 Mass. 39.

Duties and privileges of. Qualified persons may be compelled to serve as jurors under penalties prescribed by law. They are exempt from arrest in certain cases. See PRIVILEGE. They are liable to punishment for misconduct in some cases.

Consult Edwards, Forsyth, Ingersoll, on Juries; 1 Kent, 623, 640.

JURY BOX. A place set apart for the jury to sit in during the trial of a cause.

JURY LIST. A paper containing the names of jurors impanelled to try a cause, or it contains the names of all the jurors summoned to attend court.

JURYMAN. A juror; one who is impanelled on a jury. Webster, Dict.

JURY PROCESS. **In Practice.** The writs for summoning a jury, viz.: in England, *venire juratores facias*, and *distringas juratores*, or *habeas corpora juratorum*. These writs are now abolished, and jurors are summoned by precept. 1 Chitty, Archb. 344; Com. Law Proc. Act, 1852, §§ 104, 105; 3 Chitty, Stat. 519.

JURY OF WOMEN. A jury of women is given in two cases; viz.: on writ *de ventre*

inspiciendo, in which case the jury is made up of men and women, but the search is made by the latter; 1 Mad. Ch. 11; 2 P. Wms. 591; and where pregnancy is pleaded by condemned criminal in delay of execution, in which case a jury of twelve discreet women is formed, and on their returning a verdict of "enseinte" the execution is delayed till birth, and sometimes the punishment commuted to perpetual exile. But if the criminal be *priviment enseinte*, and not *quick*, there is no respite. 2 Hale, Pl. Cr. 412. As to time of quickening, see 1 Beck, Med. Jur. 229.

JUS (Lat.). Law; right; equity. Story, Eq. Jur. § 1.

JUS ABUTENDI (Lat.). The right to abuse. By this phrase is understood the right to abuse property, or having full dominion over property. 3 Toullier, n. 86.

JUS ACCRESCENDI (Lat.). The right of survivorship.

At common law, when one of several joint tenants died, the entire tenancy or estate went to the survivors, and so on to the last survivor, who took an estate of inheritance. This right, except in estates held in trust, has been abolished by statute in Alabama, Delaware, Georgia, Illinois, Indiana, Kentucky, Michigan, Missouri, Mississippi, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, and Virginia; Griffin, Reg.; 1 Hill, Abr. 439, 440; in Connecticut; 1 Root, 48; 1 Swift, Dig. 102. In Louisiana, this right was never recognized. See 11 S. & R. 192; 2 Caines, Cas. 326; 3 Vt. 543; 6 T. B. Monr. 15; ESTATE IN COMMON; ESTATE IN JOINT TENANCY.

JUS AQÆDUCTUS (Lat.). **In Civil Law.** The name of a servitude which gives to the owner of land the right to bring down water through or from the land of another, either from its source or from any other place.

Its privilege may be limited as to the time when it may be exercised. If the source fails, the servitude ceases, but revives when the water returns. If the water rises in, or naturally flows through, the land, its proprietor cannot by any grant divert it so as to prevent it flowing to the land below; 2 Rolle, Abr. 140, l. 25; Lois des Bât. part 1, c. 3. s. 1, art. 1. But if it had been brought into his land by artificial means, it seems it would be strictly his property, and that it would be in his power to grant it; Dig. 8. 3. 1. 10; 3 Burge, Confl. Laws, 417. See RIVER; WATER-COURSE; Washb. Easem.

JUS CIVILE (Lat.). **In Roman Law.** The private law, in contradistinction to the public law, or *jus gentium*; 1 Savigny, Dr. Rom. c. 1, § 1.

JUS CIVITATIS (Lat.). **In Roman Law.** The collection of laws which are to be observed among all the members of a nation. It is opposed to *jus gentium*, which is the law which regulates the affairs of nations among themselves. 2 Lepage, El. du Dr. c. 5, 1.

JUS CLOACÆ (Lat.). **In Civil Law.** The name of a servitude which requires the party who is subject to it to permit his neighbor to conduct the waters which fall on his grounds over those of the servient estate.

JUS DARE (Lat.). To give or to make the law. *Jus dare* belongs to the legislature; *jus dicere*, to the judge.

JUS DELIBERANDI (Lat.). The right of deliberating given to the heir, in those countries where the heir may have *benefit of inventory* (*q. v.*), in which to consider whether he will accept or renounce the succession.

In Louisiana he is allowed ten days before he is required to made his election. La. Civ. Code, art. 1028.

JUS DICERE (Lat.). To declare the law. It is the province of the court *jus dicere* (to declare what the law is).

JUS DISPONENDI (Lat.). The right to dispose of a thing.

JUS DUPLICATUM (Lat. double right). When a man has the possession as well as the property of any thing, he is said to have a double right, *jus duplicatum*. Bracton, l. 4, tr. 4, c. 4; 2 Bla. Com. 199.

JUS FECIALE (Lat.). **In Roman Law.** That species of international law which had its foundation in the religious belief of different nations: such as the international law which now exists among the Christian people of Europe. Savigny, Dr. Rom. c. 2, § 11.

JUS FIDUCIARUM (Lat.). **In Civil Law.** A right to something held in trust: for this there was a remedy in conscience. 2 Bla. Com. 328.

JUS GENTIUM (Lat.). The law of nations. Although the Romans used these words in the sense we attach to *law of nations*, yet among them the sense was much more extended. Falck, Encyc. Jur. 102, n. 42. It is said to have been a system made up by the early Roman lawyers of the common ingredients in the customs of the old Italian tribes, for the purpose of adjudicating questions arising in Rome between foreigners or natives and foreigners. Maine, Anc. Law, 49.

Modern writers have made a distinction between the laws of nations which have for their object the conflict between the laws of different nations, which is called *jus gentium privatum*, or private international law, and those laws of nations which regulate those matters which nations, as such, have with each other, which is denominated *jus gentium publicum*, or public international law. Fœlix, Droit Intern. Privé, n. 14. See INTERNATIONAL LAW.

JUS GLADII (Lat. the right of the sword). Supreme jurisdiction. The right to absolve from or condemn a man to death.

JUS HABENDI (Lat.). The right to have a thing.

JUS INCOGNITUM (Lat.). An unknown law. This term is applied by the

civilians to obsolete laws, which, as Bacon truly observes, are unjust; for the law to be just must give warning before it strikes. Bacon, Aph. 8, s. 1; Bowyer, Mod. Civ. Law, 33. But until it has become obsolete no custom can prevail against it. See OBSOLETE.

JUS LEGITIMUM (Lat.). **In Civil Law.** A legal right which might have been enforced by due course of law. 2 Bla. Com. 328.

JUS MARITI (Lat.). **In Scotch Law.** The right of the husband to administer, during the marriage, his wife's goods and the rents of her heritage.

In the common law, by *jus mariti* is understood the rights of the husband, as *jus mariti* cannot attach upon a bequest to the wife, although given during coverture, until the executor has assented to the legacy. 1 Bail. Eq. 214.

JUS MERUM (Lat.). A simple or bare right; a right to property in land, without possession or the right of possession.

JUS PATRONATUS (Lat.). **In Ecclesiastical Law.** A commission from the bishop, directed usually to his chancellor and others of competent learning, who are required to summon a jury, composed of six clergymen and six laymen, to inquire into and examine who is the rightful patron. 3 Bla. Com. 246.

JUS PERSONARUM (Lat.). The right of persons. See JURA PERSONARUM.

JUS PRECARIUM (Lat.). **In Civil Law.** A right to a thing held for another, for which there was no remedy. 2 Bla. Com. 328.

JUS POSTLIMINII (Lat.). The right to claim property after recapture. See POSTLIMINY; Marsh. Ins. 573; 1 Kent, 108; Dane, Abr. Index.

JUS PROJICIENDI (Lat.). **In Civil Law.** The name of a servitude by which the owner of a building has a right of projecting a part of his building towards the adjoining house, without resting on the latter. It is extended merely over the ground. Dig. 50. 16. 242; 8. 2. 25; 8. 5. 8. 5.

JUS PROTEGENDI (Lat.). **In Civil Law.** The name of a servitude: it is a right by which a part of the roof or tiling of one house is made to extend over the adjoining house. Dig. 50. 16. 242. 1; 8. 2. 25; 8. 5. 8. 5.

JUS QUÆSITUM (Lat.). A right to ask or recover: for example, in an obligation there is a binding of the obligor, and a *jus quæsitum* in the obligee. 1 Bell, Com. 323.

JUS IN RE (Lat.). A right which belongs to a person, immediately and absolutely, in a thing, and which is the same against the whole world,—*idem erga omnes.*

JUS RELICTÆ (Lat.). **In Scotch Law.** The right of a wife, after her husband's death, to a third of movables if there be children, and to one-half if there be none.

JUS AD REM (Lat.). A right which belongs to a person only mediately and relatively, and has for its foundation an obligation incurred by a particular person.

The *jus in re*, by the effect of its very nature, is independent and absolute, and is exercised *per se ipsum*, by applying it to its object; but the *jus ad rem* is the faculty of demanding and obtaining the performance of some obligation by which another is bound to me *ad aliquid dandum, vel faciendum, vel præstandum.* Thus, if I have the ownership of a horse, the usufruct of a flock of sheep, the right of habitation of a house, a right of way over your land, etc., my right in the horse, in the flock of sheep, in the house, or the land, belongs to me directly, and without any intermediary; it belongs to me absolutely, and independently of any particular relation with another person; I am in direct and immediate relation with the thing itself which forms the object of my right, without reference to any other relation. This constitutes a *jus in re.* If, on the other hand, the horse is lent to me by you, or if I have a claim against you for a thousand dollars, my right to the horse or to the sum of money exists only relatively, and can only be exercised through you; my relation to the object of the right is mediate, and is the result of the immediate relation of debtor and creditor existing between you and me. This is a *jus ad rem.* Every *jus in re*, or real right, may be vindicated by the *actio in rem* against him who is in possession of the thing, or against any one who contests the right. It has been said that the words *jus in re* of the civil law convey the same idea as thing in possession at common law. This is an error, arising from a confusion of ideas as to the distinctive characters of the two classes of rights. Nearly all the common-law writers seem to take it for granted that by the *jus in re* is understood the title or property in a thing in the possession of the owner; and that by the *jus ad rem* is meant the title or property in a thing not in the possession of the owner. But it is obvious that *possession* is not one of the elements constituting the *jus in re:* although possession is generally, but not always, one of the incidents of this right, yet the loss of possession does not exercise the slightest influence on the character of the right itself, unless it should continue for a sufficient length of time to destroy the right altogether by prescription. In many instances the *jus in re* is not accompanied by possession at all: the usuary is not entitled to the possession of the thing subject to his use; still, he has a *jus in re.* So with regard to the right of way, etc. See DOMINIUM.

A mortgage is considered by most writers as a *jus in re;* but it is clear that it is a *jus ad rem:* it is granted for the sole purpose of securing the payment of a debt or the fulfilment of some other personal obligation. In other words, it is an accessory to a principal obligation and corresponding right: it can have no separate and independent existence. The immovable on which I have a mortgage is not the object of the right, as in the case of the horse of which I am the owner, or the house of which I have the right of habitation, etc.: the true object of my right is the sum of money due to me, the payment of which I may enforce by obtaining a decree for the sale of the property mortgaged. 2 Marcadé, 350 *et seq.*

JUS RERUM (Lat.). The right of things. Its principal object is to ascertain how far a person can have a permanent dominion over things, and how that dominion is acquired.

JUS STRICTUM (Lat.). A Latin phrase, which signifies law interpreted without any modification, and in its utmost rigor.

JUS UTENDI (Lat.). The right to use property without destroying its substance. It is employed in contradistinction to the *jus abutendi*. 3 Toullier, n. 86.

JUSTICE. The constant and perpetual disposition to render every man his due. Justinian, Inst. b. 1, tit. 1; Co. 2d Inst. 56. The conformity of our actions and our will to the law. Toullier, Droit Civ. Fr. tit. prél. n. 5.

Commutative justice is that virtue whose object it is to render to every one what belongs to him, as nearly as may be, or that which governs contracts. To render commutative justice, the judge must make an equality between the parties, that no one may be a gainer by another's loss.

Distributive justice is that virtue whose object it is to distribute rewards and punishments to each one according to his merits, observing a just proportion by comparing one person or fact with another, so that neither equal persons have unequal things nor unequal persons things equal. Tr. of Eq. 3; and Touillier's learned note, Droit Civ. Fr. tit. prél. n. 7, note.

In the most extensive sense of the word, it differs little from virtue; for it includes within itself the whole circle of virtues. Yet the common distinction between them is, that that which considered positively and in itself is called virtue, when considered relatively and with respect to others has the name of justice. But justice, being in itself a part of virtue, is confined to things simply good or evil, and consists in a man's taking such a proportion of them as he ought.

Toullier exposes the want of utility and exactness in this division of distributive and commutative justice, adopted in the *compendium* or abridgments of the ancient doctors, and prefers the divisions of *internal* and *external* justice,—the first being a conformity of our *will*, and the latter a conformity of our *actions*, to the law, their union making perfect justice. Exterior justice is the object of jurisprudence; interior justice is the object of moralty. Droit Civ. Fr. tit. prél. n. 6 et 7.

According to the Frederician Code, part 1, book 1, tit. 2, s. 27, justice consists simply in letting every one enjoy the rights which he has acquired in virtue of the laws. And, as this definition includes all the other rules of right, there is properly but one single general rule of right, namely: *Give every one his own.*

In Norman French. Amenable to justice. Kelham, Dict.

In Feudal Law. Feudal jurisdiction, divided into high (*alta justitia*), and low (*simplex inferior justitia*), the former being a jurisdiction over matters of life and limb, the latter over smaller causes. Leg. Edw. Conf. c. 26; Du Cange. Sometimes high, low, and middle justice or jurisdiction were distinguished.

An assessment, Du Cange; also, a judicial fire, Du Cange.

At Common Law. A title given in England and America to judges of common-law courts, being a translation of *justitia*, which was anciently applied to common-law judges, while *judex* was applied to ecclesiastical judges and others; *e. g. judex fiscalis.* Leges Hen. I. §§ 24, 63; Anc. Laws & Inst. of Eng. Index; Co. Litt. 71 *b*.

The judges of king's bench and common pleas, and the judges of almost all the supreme courts in the United States, are properly styled "justices."

The term justice is also applied to the lowest judicial officers: *e. g.* a trial justice; a justice of the peace.

JUSTICE AYRES. In Scotch Law. The circuits through the kingdom made for the distribution of justice. Erskine, Inst. 1. 3. 25.

JUSTICE OF THE PEACE. A public officer invested with judicial powers for the purpose of preventing breaches of the peace and bringing to punishment those who have violated the law.

These officers, under the constitution of some of the states, are appointed by the executive; in others, they are elected by the people and commissioned by the executive. In some states they hold their office during good behavior; in others, for a limited period.

At common law justices of the peace have a double power in relation to the arrest of wrong-doers: when a felony or breach of the peace has been committed in their presence, they may personally arrest the offender, or command others to do so, and, in order to prevent the riotous consequences of a tumultuous assembly, they may command others to arrest affrayers when the affray has been committed in their presence. If a magistrate be not present when a crime is committed, before he can take a step to arrest the offender an oath or affirmation must be made, by some person cognizant of the fact, that the offence has been committed, and that the person charged is the offender or there is probable cause to believe that he has committed the offence.

The constitution of the United States directs that "no warrants shall issue but upon probable cause, supported by oath or affirmation." Amendm. IV. After his arrest, the person charged is brought before the justice of the peace, and after hearing he is discharged, held to bail to answer to the complaint, or, for want of bail, committed to prison.

In some of the United States, justices of the peace have jurisdiction in civil cases given to them by local regulations. In Pennsylvania, their jurisdiction extends only to one hundred dollars, in cases of contracts, express or implied; under the constitution of 1873, police magistrates have been provided for Philadelphia.

See, generally, Burn, Just.; Graydon, Just.; Bache, Man. of a Just. of the Peace; Comyn, Dig.; 15 Viner, Abr. 3; Bacon, Abr.; 2 Sell. Pr. 70; 2 Phill. Ev. 239; Chitty, Pr.; Davis, Just.

JUSTICES COURTS. In American Law. Inferior tribunals, with limited jurisdiction, both civil and criminal. There are courts so called in the states of Massachusetts and New Hampshire, and probably other states.

JUSTICES IN EYRE. Certain judges established, if not first appointed, A. D. 1176, 22 Hen. II.

England was divided into certain circuits, and three justices in eyre—or justices itinerant, as they were sometimes called—were appointed to each district, and made the circuit of the kingdom once in seven years, for the purpose of trying causes. They were afterwards directed, by Magna Charta, c. 12, to be sent into every county once a year. The itinerant justices were sometimes mere justices of assize or dower, or of general gaol delivery, and the like. 3 Bla. Com. 58; Crabb, Eng. Law, 103-104.

JUSTICES OF THE PAVILION (*justiciarii pavilionis*). Certain judges of a pye-pouder court, of a most transcendent jurisdiction, authorized by the bishop of Winchester, at a fair held at St. Giles Hills near that city, by virtue of letters-patent granted by Edw. IV. Prynne's Animadv. on Coke's 4th Inst. fol. 191.

JUSTICES OF TRAIL BASTION. A sort of justice in eyre, with large and summary powers, appointed by Edw. I. during his absence in war. Old. N. B. fol. 52; 12 Co. 25. For derivation, see Cowel.

JUSTICIAR, JUSTICIER. In Old English Law. A judge or justice. Baker, fol. 118; Cron. Angl. One of several persons learned in the law, who sat in the *aula regis*, and formed a kind of court of appeal in cases of difficulty.

The chief justiciar (*capitalis justiciarius totius Angliæ*) was a special magistrate, who presided over the whole *aula regis*, who was the principal minister of state, the second man in the kingdom, and by virtue of his office guardian of the realm in the king's absence. 3 Bla. Com. 37; Spelman, Gloss. 330, 331, 332; 2 Hawk. Pl. Cr. 6. The last who bore this title was Philip Basset, in the time of Hen. III.

JUSTICIARII ITINERANTES (Lat.). **In English Law.** Justices who formerly went from county to county to administer justice. They were usually called justices in eyre, to distinguish them from justices residing at Westminster, who were called *justicii residentes*. Co. Litt. 293.

JUSTICIARII RESIDENTES (Lat.). **In English Law.** Justices or judges who usually resided in Westminster: they were so called to distinguish them from justices in eyre. Co. Litt. 293.

JUSTICIARY. Another name for a judge. In Latin, he was called *justiciarius*, and in French, *justicier*. Not used. Bacon, Abr. *Courts* (A).

JUSTICIES (from verb *justiciare*, 2d pers. pres. subj., do you do justice to).

In English Law. A special writ, in the nature of a commission, empowering a sheriff to hold plea in his county court of a cause which he could not take jurisdiction of without this writ: *e. g.* trespass *vi et armis* for any sum, and all personal actions above forty shillings. 1 Burn, Just. 449. So called from the Latin word *justicies*, used in the writ, which runs, "*præcipimus tibi quod justicies A B*," etc.; we command you to do A B right, etc. Bracton, lib. 4, tr. 6, c. 13; Kitch. 74; Fitzh. N. B. 117; 3 Bla. Com. 3, 6.

JUSTIFIABLE HOMICIDE. That which is committed with the intention to kill, or to do a grievous bodily injury, under circumstances which the law holds sufficient to exculpate the person who commits it. A judge who, in pursuance of his duty, pronounces sentence of death, is not guilty of homicide; for it is evident that, as the law prescribes the punishment of death for certain offences, it must protect those who are intrusted with its execution. A judge, therefore, who pronounces sentence of death, in a legal manner, on a legal indictment, legally brought before him, for a capital offence committed within his jurisdiction, after a lawful trial and conviction of the defendant, is guilty of no offence; 1 Hale, Pl. Cr. 496-502.

Magistrates, or other officers intrusted with the preservation of the public peace, are justified in committing homicide, or giving orders which lead to it, if the excesses of a riotous assembly cannot be otherwise repressed; 4 Bla. Com. 178, 179.

An officer intrusted with a legal warrant, criminal or civil, and lawfully commanded by a competent tribunal to execute it, will be justified in committing homicide, if in the course of advancing to discharge his duty he be brought into such perils that without doing so he cannot either save his life or discharge the duty which he is commanded by the warrant to perform. And when the warrant commands him to put a criminal to death, he is justified in obeying it.

A soldier on duty is justified in committing homicide, in obedience to the command of his officer, unless the command was something plainly unlawful.

A private individual will, in many cases, be justified in committing homicide while acting in self-defence. See DEFENCE.

See, generally, ARREST; HOMICIDE; 4 Bla. Com. 178 *et seq.*; 1 Hale, Pl. Cr. 496 *et seq.*; 1 East, Pl. Cr. 219; 1 Russ. Cr. 538; 2 Wash. C. C. 515; 4 Mass. 391; 1 Hawks, 210; 1 Coxe, N. J. 424; 5 Yerg. 459; 9 C. & P. 22.

JUSTIFICATION. In Pleading. The allegation of matter of fact by the defendant,

establishing his legal right to do the act complained of by the plaintiff.

Justification admits the doing of the act charged as a wrong, but alleges a right to do it on the part of the defendant, thus denying that it is a wrong. Excuse merely shows reasons why the defendant should not make good the injury which the plaintiff has suffered from some wrong done. See AVOWRY.

Trespasses. A *warrant*, regular on its face, and issued by a court of competent jurisdiction, is a complete justification to the officer to whom it is directed for obeying its command, whether it be really valid or not. But where the warrant is absolutely void, or apparently irregular in an important respect, or where the act done is one which is beyond the power conferred by the warrant, it is no justification. See ARREST; TRESPASS. So, too, many acts, and even homicide committed in *self-defence*, or defence of wife, children, or servants, are justifiable; see SELF-DEFENCE; or in *preserving the public peace*; see ARREST; TRESPASS; or under a *license*, express or implied; 3 Caines, 261; 2 Bail. 4; 3 McLean, 571; see 13 Me. 115; including entry on land to demand a debt, to remove chattels; 2 W. & S. 225; 12 Vt. 273; see 2 Humphr. 425; to ask lodgings at an inn, the entry in such cases being peaceful; to exercise an incorporeal right; 21 Pick. 272; or for *public service* in case of exigency, as pulling down houses to stop a fire; Year B. 13 Hen. VIII. 16 *b*; destroying the suburbs of a city in time of war; Year B. 8 Edw. IV. 35 *b*; entry on land to make fortifications; or in *preservation* of the owner's rights of property; 14 Conn. 255; 4 D. & B. 110; 7 Dana, 220; Wright, Ohio, 333; 25 Me. 453; 6 Penn. 318; 12 Metc. 53; are justifiable.

Libel and slander may be justified in a civil action, in some cases, by proving the truth of the matter alleged, and generally by showing that the defendant had a right upon the particular occasion either to write and publish the writing or to utter the words: as, when slanderous words are found in a report of a committee of congress, or in an indictment, or words of a slanderous nature are uttered in the course of debate in the legislature by a member, or at the bar by counsel when properly instructed by his client on the subject. Comyns, Dig. *Pleader*. See DEBATE; SLANDER.

Matter in justification must be specially pleaded, and cannot be given in evidence under the general issue. See LICENSE. A plea of justification to an action for slander, oral or written, should state the charge with the same degree of certainty and precision as are required in an indictment. The object of the plea is to give the plaintiff, who is in truth an accused person, the means of knowing what are the matters alleged against him. It must be direct and explicit. It must in every respect correspond with, and be as extensive as the charge in, the declaration.

The justification, however, will be complete if it covers the essence of the libel. But it must extend to every part which could by itself form a substantive ground of action. Where the slander consists in an imputation of crime, the plea of justification must contain the same degree of precision as is requisite in an indictment for the crime, and must be supported by the same proof that is required on the trial of such an indictment. It is a perfectly well-established rule that where the charge is general in its nature, yet the plea of justification must state specific instances of the misconduct imputed to the plaintiff. And, even for the purpose of avoiding prolixity, a plea of justification cannot make a general charge of criminality or misconduct, but must set out the specific facts in which the imputed offence consists, and with such certainty as to afford the plaintiff an opportunity of joining issue precisely upon their existence. Heard, Lib. & Sl. §§ 240–244. See SLANDER.

When established by evidence, it furnishes a complete bar to the action.

In Practice. The proceeding by which bail establish their ability to perform the undertaking of the bond or recognizance.

It must take place before an authorized magistrate; 5 Binn. 461; 6 Johns. 124; 13 *id.* 422; and notice must, in general, be given by the party proposing the bail, to the opposite party, of the names of the bail and the intention to justify; 3 Harr. N. J. 503. See 3 Halst. 369.

It is a common provision that bail must justify in double the amount of the recognizance if exceptions are taken; 2 Hill, N. Y. 379; otherwise, a justification in the amount of the recognizance is, in general, sufficient.

It must be made within a specified time, or the persons named cease to be bail; 1 Cow 54. See Baldw. 148.

JUSTIFICATORS. A kind of compurgators, or those who, by oath, justified the innocence or oaths of others as in the case of wagers of law.

JUSTIFYING BAIL. In Practice. The production of bail in court, who there justify themselves against the exception of the plaintiff. See BAIL; JUSTIFICATION.

JUZGADO. In Spanish Law. The collective number of judges that concur in a decree, and more particularly the tribunal having a single judge.