aurati, from the gilt spurs they wore; and *milites*, because they formed the royal army, in virtue of their feudal tenures.

KNIGHT'S FEE was anciently so much of an inheritance in land as was sufficient to maintain a knight; and every man possessed of such an estate was obliged to be knighted, and attend the king in his wars, or pay a pecuniary sum in lieu thereof, called *escuage*. In the time of Henry II. the estate was estimated at twenty pounds a year; but Lord Coke, in his time, states it to be an estate of six hundred and eighty acres. Co. Litt. 69 *a*.

KNIGHT'S SERVICE. Upon the Norman conquest, all the lands in England were divided into knight's fees, in number above sixty thousand; and for every knight's fee, a knight was bound to attend the king in his wars forty days in a year, in which space of time, before war was reduced to a science, a campaign was generally finished. If a man only held half a knight's fee, he was only bound to attend twenty days; and so in proportion. But this personal service, in process of time, grew into pecuniary commutations, or aids; until at last, with the military part of the feudal system, it was abolished at the restoration, by the statute of 12 Car. II. c. 24. 1 Bla. Com. 410; 2 *id.* 62.

KNOW ALL MEN BY THESE PRESENTS. See PRESENTS.

KNOWINGLY. In Pleading. The word "knowingly," or "well knowing," will supply the place of a positive averment, in an indictment or declaration, that the defendant knew the facts subsequently stated; if notice or knowledge be unnecessarily stated, the allegation may be rejected as surplusage. See Comyns, Dig. *Indictment* (G 6); 2 Cush. 577; 2 Stra. 904; 2 East, 452; 1 Chitty, Pl. 367.

KNOWLEDGE. Information as to a fact.

Many acts are perfectly innocent when the party performing them is not aware of certain circumstances attending them; for example, a man may pass a counterfeit note, and be guiltless, if he did not know it was so; he may receive stolen goods, if he were not aware of the fact that they were stolen. In these and the like cases it is the guilty knowledge which makes the crime.

Such guilty knowledge is made by the statute a constituent part of the offence; and therefore it must be averred and proved as such. But it is in general true, and may be considered as a rule almost necessary to the restraint and punishment of crimes, that when a man does that which by the common law or by statute is unlawful, and in pursuing his criminal purpose does that which constitutes another and different offence, he shall be held responsible for all the legal consequences of such criminal act. When a man, without justifiable cause, intends to wound or maim another, and in doing it kills him, it is murder, though he had no intention to take life. It is true that in the commission of all crimes a guilty purpose, a criminal will and motive, are implied. But, in general, such bad motive or criminal will and purpose, that disposition of mind and heart which is designated by the generic and significant term "malice," is implied from the criminal act itself. But if a man does an act, which would be otherwise criminal, through mistake or accident, or by force or the compulsion of others, in which his own will and mind do not instigate him to the act or concur in it, it is matter of defence, to be averred and proved on his part, if it does not arise out of the circumstances of the case adduced on the part of the prosecution. *Per Shaw*, C. J., in 2 Metc. Mass. 192. Thus, it is not necessary, in an indictment against an unmarried man for adultery with a married woman, to aver that he knew, at the time when the offence was committed, that she was a married woman; nor is it necessary to prove such knowledge at the trial. 2 Metc. Mass. 190. See, as to the proof of guilty knowledge, 1 B. & H. Lead. Cr. Cas. 185–191. See INTENTION; IGNORANCE OF LAW. As to the doctrine of *imputed knowledge*, see NOTICE

L.

LABEL. A slip of ribbon, parchment, or paper, attached to a deed or other writing to hold the appended seal.

In the ordinary use of the word, it is a slip of paper attached to articles of manufacture for the purpose of describing them or specifying their quality, etc., or the name of the maker. The use of a label has been distinguished from a trade mark proper; Browne, Trade Marks, §§ 133, 537, 538. The use of labels will be protected by a court of equity under some circumstances; *id.* 538. A copy of a writ in the Eng. Exch. Tidd, Pr. *156.

LABOR. Continued operation; work.

The labor and skill of one man are frequently used in a partnership, and valued as equal to the capital of another.

When business has been done for another.

and suit is brought to recover a just reward, there is generally contained in the declaration a count for work and labor.

Where penitentiaries exist, persons who have committed crimes are condemned to be imprisoned therein at labor. Under an order of court directing a receiver to pay claims for "labor," an attorney who rendered services to the receiver is included; 8 Report. 579.

LABORER. A servant in husbandry or manufacture not living *intra mœnia;* Wharton, Law Dic.; for various acts of parliament affecting the rights and duties of laborers, see *id.* tit. Labor.

In Pennsylvania (P. L. 1872, p. 47.), Alabama (Code 1876, sec. 3481), and other states, laborers have a statutory lien for their wages. This applies to those engaged in manual labor; 82 Penn. 469; 84 *id.* 168; and not to a hotel cook; 77 *id.* 107.

The term has been held to include a superintendent in charge of laborers employed by a railroad contractor; 5 How. Pr. 454; and a drayman; 30 N. J. Eq. 588; but not an assistant chief engineer on a railroad; 39 Mich. 47; s. c. 33 Am. Rep. 348, n.; nor a contractor for building the roadbed of a railroad; *id.* 594; nor a superintendent of a mining company; 16 Hun, 186; 17 *id.* 463; nor a farm overseer; 81 N. C. 340; s. c. 31 Am. Rep. 503; nor a consulting engineer; 38 Barb. 390. But an architect is within the mechanics' lien law which extends to those who "perform labor;" 76 N. Y. 50; s. c. 32 Am. Rep. 262, n.; 26 N. J. Eq. 29, 389; 13 Minn. 475; *contra*, 6 Mo. App. 445.

LABOR A JURY. To tamper with a jury; to persuade jurymen not to appear. It seems to come from the meaning of labor, to prosecute with energy, to urge: as *to labor a point.* Dy. 48; Hob. 294; Co. Litt. 157 *b*; 14 & 20 Hen. VII. 30, 11. The first lawyer that came from England to practise in Boston was sent back for laboring a jury. Washb. Jud. Hist.

LACHES (Fr. *lacher*). Unreasonable delay; neglect to do a thing or to seek to enforce a right at the proper time

When a person has been guilty of unreasonable delay in seeking to enforce a right in equity, this circumstance will, in many cases, in equity prejudice his right, or even his remedy. It is said that equity does not encourage stale claims, nor give relief to those who sleep upon their rights; 4 Wait, Act. & Def. 472; 9 Pet. 405; 91 U. S. 512, 806.

Equity will not decree the specific performance of a contract where the person seeking it has been guilty of laches in bringing his bill, nor unless he has shown himself ready, desirous, prompt, and eager; 5 Ves. 720 n.; Fry, Sp. Perf. 422.

One who seeks to impeach a transaction on the ground of fraud must seek redress promptly; he must show reasonable diligence. Mere lapse of time will sometimes render a fraudulent transaction unimpeachable; Kerr, Fraud & Mist. 303; 9 Pet. 405.

In general, when a party has been guilty of laches in enforcing his right by great delay, this circumstance will, at common law, prejudice and sometimes operate in bar of a remedy which it is discretionary and not compulsory in the court to afford. In courts of equity, and in admiralty, spiritual, and other courts, also, delay will generally prejudice; 1 Chitty, Pr. 786, and the cases there cited; 6 Johns. Ch. 360. As laches at law, Chitty refers only to cases of injury to character and feelings, to objections to irregularities in legal proceedings, and to motions for criminal informations; the first is, however, a mere question of fact for the jury, the last two of practice.

But laches may be excused from ignorance of the party's right; 2 Mer. 362; 2 Ball & B. 104; from the obscurity of the transaction; 2 Sch. & L. 487; by the pendency of a suit; 1 Sch. & L. 413; and where the party labors under a legal disability: as, insanity, coverture, infancy, and the like. And no laches can be imputed to the public; 4 Mass. 522; 3 S. & R. 291; 4 Hen. & M. 57. See Belt, Suppl. to Ves. 456; 2 *id.* 170.

LADY'S FRIEND. Previously to the act of 1857 abolishing parliamentary divorces, a functionary in the British house of commons. When the husband sues for a divorce, or asks the passage of an act to divorce him from his wife, he is required to make a provision for her before the passage of the act: it is the duty of the lady's friend to see that such a provision is made. Macq. H. & W. 213.

LADY-DAY. The 25th of March, the feast of the Annunciation of the Blessed Virgin Mary. In parts of Ireland, however, they so designate the 15th of August, the festival of the Assumption of the Virgin.

LÆSA MAJESTAS (Lat.). Læsemajesty, or injured majesty; high treason. It is a phrase taken from the civil law, and anciently meant any offence against the king's person or dignity, defined by 25 Edw. III. c. 6. See Glanv. lib. 5, c. 2; 4 Bla. Com. 75; Br. 118; CRIMEN LÆSÆ MAJESTATIS.

LÆSIONE FIDEI, SUITS PRO, proceedings in the ecclesiastical courts for spiritual offences against conscience, for non-payment of debts, or breaches of civil contracts. This attempt to turn the ecclesiastical courts into courts of equity was checked by the Constitutions of Clarendon, A. D. 1164, *q. v.* 3 Bla. Com. 52; Whart. Lex.

LAGA. The law.

LAGAN (Sax. *liggan, cubare*). Goods found at such a distance from shore that it was uncertain what coast they would be carried to, and therefore belonging to the finder. Br. 120. See LIGAN.

LAHLSLIT (Sax.). A breach of law. Cowel. A mulct for an offence, viz.: twelve "ores." 1 Anc. Inst. & Laws of Eng. 169.

LAIRESITE. The name of a fine imposed upon those who committed adultery or fornication. Tech. Dict.

LAITY. Those persons who do not make a part of the clergy. They are divided into three states: 1. *Civil*, including all the nation, except the clergy, the army and navy, and subdivided into the *nobility* and the *commonalty*. 2. *Military*. 3. *Maritime*, consisting of the navy. Whart. Lex. In the United States the division of the people into clergy and laity is not authorized by law, but is merely conventional.

LAKE. A riparian owner of land on a navigable lake does not own any part of the bed, but on a non-navigable lake he takes the bed of the lake *ad medium filum*; 42 Wisc. 214, 248; 45 Vt. 215; 58 Ind. 248. See L. R. 3 App. Cas. 1324. The riparian proprietor upon a navigable lake has the exclusive right of access to and from the lake in front of his land, and of building wharves in aid of navigation, not interfering with the public easement; 42 Wisc. 214; 10 Mich. 125. Riparian owners on the large fresh-water lakes of New York own only to low water mark; the public own the beds of the lake; 4 Wend. 423; the same rule obtains in New Hampshire; 9 N. H. 461; but in a later case it was held that a lake about one mile wide by five miles long passed under a grant of a larger tract which included it; 36 Barb. 102. See Ang. Waterc.

LAMB. A sheep, ram or ewe, under the age of one year. 4 C. & P. 216.

LAMBETH DEGREE. A degree given by the archbishop of Canterbury. 1 Bla. Com. 381, n. Although he can confer all degrees given by the two universities, the graduates have many privileges not shared by the recipients of his degrees.

LAMMAS DAY. The 1st of August. Cowel. It is one of the Scotch quarter days, and is what is called a "conventional term." Moz. and W.

LAND, LANDS. A term comprehending any ground, soil, or earth whatsoever: as, meadows, pastures, woods, waters, marshes, furzes, and heath. 45 N. H. 313. Arable land.

Annexations made by a stranger to the soil of another without his consent become the property of the owner of the soil; Britton, bk. 2, ch. 2, sec. 6, p. 856; 2 Kent, 334; 15 Ill. 397. When annexations are made by the owner of the soil with the materials of another, so long as the identity of the original materials can be proved, the right of the original owner is not lost; 25 Vt. 620; 57 N. H. 514.

An estate of frank tenement at the least. Shepp. Touch. 92.

Land has an indefinite extent upward as well as downward: therefore, land legally includes all houses or other buildings standing or built on it, and whatever is in a direct line between the surface and the centre of the earth. 3 Kent, 378, n. See Co. Litt. 4 *a*; Wood, Inst. 120; 2 Bla. Com. 18; 1 Cruise, Dig. 58. The law recognizes horizontal divisions of land: *e. g.*, the different strata of a mine; 37 Penn. 430. Under the homestead laws, a part of a house may be reserved and the rest taken in execution; 4 Iowa, 368. *Contra*, 9 Wisc. 70. Livery may be made of a chamber in a house; Shep. Touchst. 214; and an upper chamber may constitute a distinct tenement; Burt. R. P. 549. See the subject treated in 1 Am. Law Reg. N. S. 577. It is not so broad a term as tenements, or hereditaments, but has been defined in some states as including these. 1 Washb. R. P. 9; 2 Rev. Stat. of N. Y. 137, § 6; 28 Barb. 336.

In the technical sense, freeholds are not included within the word lands; 3 Madd. 535. The term *terra* in Latin was used to denote land, from *terendo, quia vomere teritur* (because it is broken by the plough), and, accordingly, in fines and recoveries, land, *i. e. terra*, has been held to mean arable land; Salk. 256; Cowp. 346; Co. Litt. 4 *a*; 11 Co. 55 *a*. But see Cro. Eliz. 476; 4 Bingh. 90; Burt. R. P. 196. See, also, 2 P. Wms. 458, n.; 5 Ves. 476; 20 Viner, Abr. 203.

Land includes, in general, all the buildings erected upon it; 9 Day, 374; but to this general rule there are some exceptions. It is true that if a stranger voluntarily erect buildings on another's land, they will belong to the owner of the land, and will become a part of it; 16 Mass. 449; 105 *id.* 414; yet cases are not wanting where it has been held that such an erection, under peculiar circumstances, would be considered as personal property; 4 Mass. 514; 111 *id.* 298; 6 N. H. 555; 10 Me. 371; 1 Dana, 591; 1 Burr. 144. It includes mines, except mines of gold and silver; and in the United States a grant of public lands will include these also; 3 Kent, 378, n.; 1 N. Y. 572. See MINES.

If one be seised of some lands in fee, and possessed of other lands for years, all in one parish, and he grant all his lands in that parish (without naming them), in fee-simple, or for life, by this grant shall pass no more but the lands he hath in fee-simple; Shepp. Touchst. 92. But if a man have no freehold estate, "lands," in a will, will pass his leasehold; and now, by statute, leasehold will pass if no contrary intent is shown, and the description is applicable even if he have freehold; 1 Vict. c. 26; 2 B. & P. 303; Cro. Car. 292: 1 P. Wms. 286; 11 Beav. 237, 250.

Generally, in wills, "land" is used in its broadest sense; 1 Jarm. Wills, 604, n.; Pow. Dev. 186; 10 Paige, 140. But as the word has two senses, one general and one restricted, if it occurs accompanied with other words which either in whole or in part supply the difference between the two senses, that is a reason for taking it in its less general sense: *e. g.* in a grant of lands, meadows, and pastures, the former word is held to mean only arable land; Burt. R. P. 183; Cro. Eliz. 476, 659; 2 And. 123; 5 Johns. 440.

Incorporeal hereditaments will not pass under "lands," if there is any other real estate to satisfy the devise; but if there is no other such real estate they will pass, by statute. Moore, 359, pl. 49; 3 & 4 Will. IV. cc. 74, 105, 106. See REAL PROPERTY; FIXTURES.

In equity, under certain circumstances, money is considered land; as where it is di-

rected to be converted into land, by will or contract, marriage articles, settlement, or otherwise; Bisp. Eq. § 307. See CONVERSION.

LANDS CLAUSES CONSOLIDATION ACTS. Important acts, beginning in 1845, and last amended by 32 & 33 Vict. c. 18, the object of which was to provide legislative clauses in a convenient form for incorporation by reference in future special acts of parliament for taking lands, with or without the consent of their owners, for the promotion of railways, and other public undertakings; Moz. & W.

LAND CEAP, LAND CHEAP (land, and Sax. *ceapan*, to buy). A fine payable in money or cattle, upon the alienation of land, within certain manors and liberties. Cowel, Gloss.

LAND COURT. In American Law. The name of a court which formerly existed in the city of St. Louis, state of Missouri, having sole jurisdiction in St. Louis county in suits respecting lands, and in actions of ejectment, dower, partition.

LANDIRECTA. Rights charged upon land. Toml. See TRINODA NECESSITAS.

LAND-MARK. A monument set up in order to ascertain the boundaries between two contiguous estates. For removing a landmark an action lies. 1 Thomas, Co. Litt. 787. See MONUMENTS.

LAND-REEVE. One whose business it is to overlook parts of an estate. Moz. & W.

LAND TAX. A tax on the beneficial proprietor of land such as is imposed in many of the states; so far as a tenant is beneficial proprietor, aud no farther, does it rest on him. It has superseded all other methods of taxation in Great Britain. Sugden, Vend. 268. It was first imposed in 1693, a new valuation of the lands in the kingdom having been made in 1692, which has not since been changed. In 1798 it was made perpetual, at a rate of four shillings in a pound of valued rent. Under the provisions of the stat. 16 & 17 Vict. c. 74; this tax is now generally redeemed. See Encyc. Brit. *Taxation.*

LAND TENANT (commonly called *terre tenant*, *q. v.*). He who actually possesses the land.

LAND TITLES AND TRANSFER ACT. The stat. 38 & 39 Vict. c. 87, for the establishment of a registry for titles to land, with various provisions in reference to the transmission of land, and unregistered dealings with registered land, etc. Analogous to the recording or registry laws of the United States.

LANDING. A place for loading or unloading boats, but not a harbor for them. 74 Penn. 373.

LANDLORD. The lord or proprietor of land, who, under the feudal system, retained the dominion or ultimate property of the feud, or fee of the land; while his grantee, who had only the possession and use of the land, was styled the feudatory, or vassal, which was only another name for the tenant or holder of it. In the popular meaning of the word, however, it is applied to a person who owns lands or tenements which he rents out to others.

LANDLORD AND TENANT. A term used to denote the relation which subsists by virtue of a contract, express or implied, between two or more persons, for the possession or occupation of lands or tenements either for a definite period, from year to year, for life, or at will.

When this relation is created by an express contract, the instrument made use of for the purpose is called a lease. See LEASE. But it may also arise by necessary implication from the circumstances of the case and the relative position of the parties to each other; for the law will imply its existence in many cases where there is an ownership of land on the one hand and an occupation of it by permission on the other; and in such cases it will be presumed that the occupant intends to compensate the owner for the use of the premises; 4 Pet. 84; 39 Ill. 578; 60 N. Y. 102.

The *intention to create.* This relation may be inferred from a variety of circumstances; but the most obvious acknowledgment of its existence is the payment of rent; and this principle applies even after the expiration of a lease for a definite term of years; for if a tenant continues to hold over, after his term has run out, the landlord may, if he chooses, consider him a tenant, and he is, in fact, understood to do so, unless he proceeds to eject him at once. If the landlord suffers him to remain, and receives rent from him, or by any other act acknowledges him still as tenant, a new tenancy springs up, usually from year to year, regulated by the same covenants and stipulations entered into between the parties at the creation of the original term in so far as they are applicable to the altered nature of the tenancy; 15 Johns. 505; 4 M'Cord. 59; 2 C. & P. 348; 42 Ind. 212; 43 Md. 446; 42 Cal. 316.

The payment of money, however, is only a *prima facie* acknowledgment of the existence of a tenancy; for if it does not appear to have been paid as rent, but has been paid by mistake or stands upon some other consideration, it will not be evidence of a subsisting tenancy; 10 East, 261; 4 Bingh. 91; 3 B. & C. 413; 4 M. & G. 143. Neither does a mere participation in the profits of land, where the owner is not excluded from possession, nor the letting of land *upon shares*, unless the occupant expressly agrees to pay a certain part of the crop as rent, in either case amount to a tenancy; 1 Gill & J. 266; 3 Zabr. 390; 2 Rawle, 11; 42 Vt. 94; 60 N. Y. 221; 21 Ill. 200.

But the relation of landlord and tenant will not be inferred from the mere occupation of land, if the relative position of the parties to each other can, under the circum-

stances of the case, be referred to any other distinct cause: as, for instance, between a vendor and vendee of land, where the purchaser remains in possession after the agreement to purchase falls through. For the possession in that case was evidently taken with the understanding of both parties that the occupant should be owner, and not tenant; and the other party cannot without his consent convert him into a tenant, so as to charge him with rent; 6 Johns. 46; 21 Me. 525; 8 M. & W. 118; 10 Cush. 259; 16 Vt. 257; 11 N. H. 148; 60 Barb. 463; 46 Me. 456; 12 B. Monr. 504; 16 Pet. 25; 17 Ind. 509. The same principle applies to a mortgagor and mortgagee, as well as to that of a mortgagor and an assignee of the mortgagee; for no privity of the estate exists in either case; and, as a general rule, a tenancy by implication can never arise under a party who has not the legal estate of the premises in question; 2 M. & R. 303; 6 Ad. & E. 265; Taylor, Landl. & T. § 25; 16 Vt. 371.

Generally, the rights and obligations of the parties will be considered as having commenced from the date of the lease, if there be one, and no other time for its commencement has been agreed upon; or, if there be no date, then from the delivery of the papers. If, however, there be no writings, it will take effect from the day the tenant entered into possession, and not with reference to any particular quarter-day; 4 Johns. 230; 15 Wend. 656; 3 Camp. 510; Taylor, Landl. & T. 135 (11 ed.). And these rights and duties attach to each of the parties, not only in respect to each other, but also with reference to other persons who are strangers to the contract. The landlord retains certain rights over the property, although he has parted with its possession, while the tenant assumes obligations with respect to it which continue so long as he is invested with that character.

After the making of a lease, the *right of possession*, in legal contemplation, remains in the landlord until the contract is consummated by the entry of the lessee. When the tenant enters, this right of possession changes, and he draws to himself all the rights incident to possession. The landlord's rights in the premises during the term of the lease are confined to those expressly or impliedly derived from the contract of lease and to the protection of his reversionary interest. He may maintain actions for such injuries as would, in the ordinary course of things, continue to affect his interest after the determination of the lease. But such injuries must be of a character permanently to affect the inheritance; such are breaking the windows of a house, cutting timber, or damming up a rivulet, whereby the timber on the estate becomes rotten; 11 Mass. 519; 1 Maule & S. 234; 3 Me. 6; 5 Duer, 494; 26 How. Pr. 105.

The landlord usually reserves the right to go upon the premises peaceably, for the purpose of ascertaining whether any waste or injury has been committed by the tenant or other persons, first giving notice of his intention. But he has no such right unless he reserves it in the lease. He may also use all ways appurtenant thereto, and peaceably enter the premises to demand rent, to make such repairs as are necessary to prevent waste, or to remove an obstruction; 1 B. & C. 8; 7 Pick. 76; 5 Harr. 378. But if the rent is payable in hay or other produce, to be delivered to him from the farm, he is not entitled to go upon the land and take it, until it is delivered to him by the tenant, or until after it has been severed and set apart for his use; 9 Me. 137; 5 Blackf. 317.

The *landlord's responsibilities* in respect to possession, also, are suspended as soon as the tenant commences his occupation; 4 Term, 318; 2 Sandf. 301; 2 St. Louis (Mo.) App. 66. But if a stranger receive injuries from the ruinous state of the premises at the time of the demise, or from any fault in their construction, or from any nuisance thereon, even though it be created by a tenant's ordinary use of the premises, the landlord remains liable; 43 Barb. 482; L. R. 2 C. P. 311; 116 Mass. 67; 4 Hun, 24; 20 Penn. 387; and if the landlord has undertaken to keep the premises in repair, and the injury be occasioned by his neglect to keep up the repairs, or if he renew the lease with a nuisance upon it, he will be likewise liable; 2 H. Blackst. 350; 4 Taunt. 649; 1 Ad. & E. 822; 67 Ill. 47.

The *principal obligation on the part of the landlord*, which is, in fact, always to be implied from the operative words of the lease, but is also usually inserted as a distinct covenant, is that the tenant shall enjoy the quiet possession of the premises,—which means, substantially, that he shall not be turned out of possession of the whole or any material part of the premises by one having a title paramount to that of landlord, or that the landlord shall not himself disturb or render his occupation uncomfortable by the erection of a nuisance on or near the premises, which the law holds tantamount to an eviction; 8 Co. 80 *b*; 4 Wend. 502; 8 Paige, 597; 8 Cow. 727; 13 N. Y. 151; 5 Day, 282; 6 Term, 458; 29 Md. 35; 10 Gray, 258; 3 Duer, 464; 3 East, 491; 6 Dowl. & R. 349; 7 Wend. 281; 6 Mass. 246. But express covenants for quiet enjoyment are framed usually only against eviction by a paramount title and against the lessor, his heirs, and those claiming under them; implied covenants have a similar effect. So that if the tenant be ousted by a stranger, that is, by one having no title, or if the molestation proceeds from the acts of a third person, the landlord is in neither case responsible for it; 1 Term, 671; 3 Johns. 471; 7 Wend. 281; 5 Hill, N. Y. 599; 13 East, 72; 12 Wend. 529; 25 Barb. 594; Taylor, Landl. & T. § 304, etc.

Another *obligation* which the law imposes *upon the landlord*, in the absence of any express stipulation in the lease, is the payment of all arrears of ground-rent, or interest upon mortgages to which the property leased may be subject. The same rule applies as regards

all taxes chargeable on the premises, though, as regards these, statutes, both in England and in almost all the United States, have been passed expressly imposing the duty of paying them on the landlord. Sometimes covenants to that effect are inserted in the lease. In general, every landlord is bound to protect his immediate tenant against all paramount claims; and if a tenant is compelled, in order to protect himself in the enjoyment of the land in respect of which his rent is payable, to make payment which ought, as between himself and his landlord, to have been made by the latter, he may call upon the landlord to reimburse him, or he may set off such payment against the rent due or to become due; 6 Taunt. 524; 5 Bingh. 409; 3 B. & Ald. 647; 7 *id.* 285; 5 *id.* 521; 3 Ad. & E. 331; 3 M. & W. 312; 19 Mo. 501.

There is no warranty in a lease on the part of the landlord that the premises are fit for the purpose for which they are intended (but see 3 Rob. La. 52); 25 Wend. 669; 71 Penn. 383; 3 Gray, 323; 48 Me. 316. The landlord is, in the absence of any express covenant or agreement, under *no obligation to make any repairs*, or to rebuild in case the premises should be burned. And it is not in the power of a tenant to make repairs at the expense of his landlord, unless there be a special agreement between them authorizing him to do so; for the tenant takes the premises for *better or for worse*, and cannot involve the landlord in expense for repairs without his consent; 6 Cow. 475; 3 Du. N. Y. 464; 7 East, 116; 1 Ry. & M. 357; 7 Mann. & G. 576; 52 N. Y. 512; 51 Ill. 492; 33 Cal. 341; 1 Sandf. 321; 22 Ind. 114; 36 Vt. 40. Even if the premises have become uninhabitable by fire, and the landlord having insured them has recovered the insurance-money, the tenant cannot compel him to expend the money so recovered in rebuilding, unless he has expressly engaged to do so; nor can he, in such an event, protect himself from the payment of rent during the unexpired balance of the term; 8 Paige, Ch. 437; 1 Sim. Ch. 146; 1 Term, 312; 4 N. Y. 126; 1 E. & E. 474; 52 N. Y. 512; 81 Ill. 607.

On the *part of the tenant*, we may observe that on taking possession he is at once invested with all *the rights incident to possession*, is entitled to the use of all the privileges and easements appurtenant to the premises, and is at liberty to take such reasonable estovers and emblements as are attached to the estate. He may maintain an action against any person who disturbs his possession or trespasses upon the premises, though it be the landlord himself; Cro. Car. 325; 3 Wils. 461; 2 W. Bla. 924; 2 B. & Ad. 97; 1 Denio, 91; 3 Lev. 209; 17 C. B. N. S. 678; 8 Cush. 119; 1 Ohio, 251. And even after the expiration of his term may recover for injuries done during the period of his tenancy; 2 Rolle, Abr. 551; Holt, N. P. C. 553. As occupant, he is also answerable for any neglect to repair highways, fences, or party-wall. He is liable for all injuries produced by the mismanagement of his servants, or by a nuisance kept upon the premises, or by an obstruction of the highway adjacent to them, or the like; for, as a general rule, where a man is in possession of property, he must so manage it that other persons shall not be injured thereby; 3 Term, 766; 3 Q. B. 449; 2 Ld. Raym. 792; 22 N. Y. 355; 65 Ill. 160; 1 M. & W. 435; 51 Penn. 429; 3 Hun, 708.

Another obligation which the law imposes upon every tenant, independent of any agreement, is to treat the premises in such a manner that no substantial injury shall be done to them, and so that they may revert to the landlord at the end of the term, unimpaired by any wilful or negligent conduct on his part. In the language of the books, he must keep the buildings wind-and-water tight, and is bound to make fair and tenantable repairs, such as the keeping of fences in order, or replacing doors and windows that are broken during his occupation. If it is a furnished house, he must preserve the furniture, and leave it, with the linen, etc., clean and in good order; 5 C. & P. 239; 7 *id.* 327; 4 Term, 318; 18 Ves. Ch. 331; 2 Esp. 590; 4 M. & G. 95; 12 M. & W. 827; 94 U. S. 53; 55 Md. 71; 28 Penn. 305.

But he is *not bound to rebuild* premises which have accidentally become ruinous during his occupation; nor is he answerable for ordinary wear and tear, nor for an accidental fire, nor to put a new roof on the building, nor to make what are usually called general or substantial repairs. Neither is he bound to do painting, white-washing, or papering, except so far as they may be necessary to preserve exposed timber from decay. In general he need do nothing which will make the inheritance better than he found it; 6 Term, 650; 6 C. & P. 8; 12 Ad. & E. 476; 1 Marsh. 567; 10 B. & C. 299; 2 Daly, 140; 10 Q. B. 135.

With respect to *farming leases*, a tenant is under a similar obligation to repair; but it differs from the general obligation in this, that it is confined to the dwelling-house which he occupies,—the burden of repairing and maintaining the out-buildings and other erections on the farm being sustained either by the landlord, or the tenant, in the absence of any express provision in the lease, by the particular custom of the country in which the farm is situated. He is always bound, however, to cultivate the farm in a good and husband-like manner, to keep the fences in repair, and to preserve the timber and ornamental trees in good condition; and for any violation of any of these duties he is liable to be proceeded against by the landlord *for waste*, whether the act of waste be committed by the tenant or, through his negligence, by a stranger; Co. Litt. 53; 6 Taunt. 300; 13 East, 18; 2 Dougl. 745; 1 Taunt. 198; 1 Denio, 104; 55 Penn. 347; 70 Ill. 527; 94 U. S. 53; 5 Term, 373. As to what constitutes waste, see WASTE.

The tenant's general obligation to repair

also renders him *responsible for any injury* a stranger may sustain by his neglect to keep the premises in a safe condition: as, by not keeping the covers of his vaults sufficiently closed, so that a person walking in the street falls through, or is injured thereby. If he repairs or improves the building, he must guard against accident to the passers-by in the street, by erecting a suitable barricade, or stationing a person there to give notice of the danger; 2 Term, 318; 109 Mass. 398; 22 N. Y. 366; 65 Barb. 214; L. R. 2 C. P. 311; L. R. 5 Q. B. 501. For any unreasonable obstruction which he places in the highway adjoining his premises, he may be indicted for causing a public nuisance, as well as rendered liable to an action for damages, at the suit of any individual injured. Nor may the tenant keep dangerous animals on the premises; 4 Denio, 500; 15 Vt. 404. At common law, if a fire began in a dwelling-house and spread to neighboring buildings, the tenant of the house where the fire begun was liable on damages to all whose property was injured. But by a statute of Queen Anne, amended by stat. 14 Geo. III. c. 78, this right of action has been taken away. The statute is generally re-enacted in the United States; *vide* Taylor, Landl. & T. § 196.

The tenant's *chief duty*, however, is *the payment of rent*, the amount of which is either fixed by the terms of the lease, or, in the absence of an express agreement, is such a reasonable compensation for the occupation of the premises as they are fairly worth. If there has been no particular agreement between the parties, the tenant pays rent only for the time he has had the beneficial enjoyment of the premises; but if he has entered into an express agreement to pay rent *during the term*, no casualty or injury to the premises by fire or otherwise, nothing, in fact, short of an eviction, will excuse him from such payment; Al. 26; 4 Paige, Ch. 355; 18 Ves. 415; 1 H. & J. 42; 16 Mass. 240; 7 Gray, 560; 1 Term, 310; 10 M. & W. 321; 6 Phila. 457; 72 Penn. 685; 61 N. Y. 356; 80 Ill. 532; 4 Harr. & J. 564. But this is not the law in South Carolina; 1 Bay, 499; 4 McCord, 447. But, if he has been deprived of the possession of the premises by the landlord, or by a third person, under a title paramount to that of the landlord, or if the latter annoys his tenant, or erects or causes the erection of such a nuisance upon or near the premises as renders the tenant's occupation so uncomfortable as to justify his removal, he is in either case discharged from the payment of rent; 8 Cowen, 727; 4 N. Y. 217; 4 Rawle, 339; Co. Litt. 148 *b*; 75 Ill. 536; 117 Mass. 262; 106 Mass. 201; 18 N.Y. 509; 63 Ill. 430; 2 Ired. Eq. 350; 17 C. B. 30. If, however, part only of the premises be recovered by paramount title, the rent is apportioned, and the tenant remains liable in proportion to the part from which he has not been evicted; 2 East, 575; 39 Barb. 59; 1 Allen, 489; see RENT.

The obligation to pay rent may *be apportioned;* for, as rent is incident to the reversion, it will become payable to the assignees of the respective portions thereof whenever that reversion is severed by an act of the parties or of the law. But the tenant's consent is necessary for an apportionment when made by the landlord, unless the proportion of rent chargeable upon each portion of the land has been settled by the intervention of a jury; 22 Wend. 121; 2 Barb. 643; 3 Denio, 454; 5 B. & Ald. 876; 1 M. & G. 577; 6 Halst. 262; 22 Pick. 569. A tenant, however, cannot get rid of or apportion his rent by transferring the whole or a part of his lease; for if he assigns it, or underlets a portion of it, he still remains liable to his landlord for the whole; Cro. Eliz. 633; 24 Barb. 333; Dyer, 4 B. Instances of an apportionment by act of law occur where there is a descent of the reversion among a number of heirs, or upon a judicial sale of a portion of the premises; for in such cases the tenant will be bound to pay rent to each of the parties for the portion of the premises belonging to them respectively. So, if a man dies, leaving a widow, she will have a right to receive one-third of the rent, while the remaining two-thirds will be payable to his heirs; so, if a part of the demised premises be taken for public purposes, the tenant is entitled to an apportionment; Cro. Eliz. 742; Co. Litt. 148 *a*; 25 Wend. 456; 13 Ill. 625; 20 Mo. 24; 57 Penn. 271; 3 Whart. 357. At common law rent could not be apportioned as to time; 2 Ves. Sr. 672; 3 Watts, 394. But various statutes, such as 11 Geo. II. c. 19, both in England and the United States, have mitigated the hardships resulting from an enforcement of this rule. See Taylor, Landl. & T. § 389.

These rights and liabilities are not confined to the immediate parties to the contract, but will be found to *attach to all persons* to whom the estate may be transferred, or who may succeed to the possession of the premises, either as landlords or tenants. This principle follows as a necessary consequence of that privity of estate which is incident to the relation of landlord and tenant. A landlord may not violate his tenant's rights by a sale of the property; neither can a tenant avoid his responsibilities by substituting another tenant in his stead without the landlord's consent. The purchaser of the property becomes in one case the landlord, and is entitled to all the rights and remedies against the tenant or his assignee which the seller had; while in the other case the assignee of the lessee assumes all the liabilities of the latter, and is entitled to the same protection which he might claim from the assignee of the reversion; in the case of express covenants the original lessee is not by the transfer discharged from his obligations; 17 Johns. 239; 24 Barb. 365; 13 Wend. 530; 19 N. Y. 68; 8 Ves. Ch. 95; 1 Ves. & B. Ch. 11; 4 Term, 94; 17 Vt. 626; 2 W. & S. 556; 12 Miss. 43; 1 Dall. 305. In case of implied covenants he is discharged if the landlord specially accept the assignee as his

tenant; 9 Vt. 191; 3 Rep. 22; 1 Sm. L. Cas. *176; and the liability of the assignee may be at any time terminated by him, by a transfer of the estate assigned, even if the transfer be made to a pauper with express intent to evade liability; 3 Y. & C. 96; 9 Cow. 88; 9 Vt. 181.

The relation of landlord and tenant *may be terminated* in several ways. If it is a *tenancy for life*, it will of course terminate upon the decease of him upon whose life the lease depends; but if it be for life, or for a certain number of years, and depend upon some particular event, the happening of that event will determine the tenancy. So if it be for a certain number of years, independent of any contingency, it will expire at the last moment of the last day of the tenancy. And in all these cases depending upon the express conditions of the lease, no notice to quit will be necessary in order to dissolve the relation of the parties to each other; Co. Litt. 216; Shepp. Touchst. 187; 9 Ad. & E. 879; 5 Johns. 128; 1 Pick. 43; 2 S. & R. 49; 18 Me. 264; 7 Halst. 99; Taylor, Landl. & T. § 465.

But a *tenancy from year to year*, or *at will*, can only be terminated on the part of the landlord by a *notice to quit*. This notice might at common law be by parol, but by statute in England and in most of the United States must now be in writing; 3 Burr. 1603; 2 Brewst. 528; 5 Esp. 196; it must be explicit, and require the tenant to remove from the premises; 2 Clark, Pa. 219; 2 Gray, 335; 11 Cush. 191; Dougl. 175; 5 Ad. & E. 350; it must be served upon the tenant, and not upon an under-tenant; it must run in the name of the landlord, and not of his agent; 10 Johns. 270; 6 B. & G. 41. But personal service of the notice on the tenant is not absolutely essential, and it is sufficient if the notice be left at the tenant's usual residence with his wife or servant; 4 Tenn. 464; 7 East, 551; L. R. 5 H. L. 134; 103 Mass. 154; 44 Mo. 581. Whether a tenant from year to year is in any event bound to give notice to determine the tenancy seems doubtful. See the authorities collected in Bright. Pa. 463. At common law this notice was required to be one of half a year, ending with the period of the year at which the tenancy commenced; 1 W. Bla. 596; 3 Term, 13; 7 Q. B. 638; 4 Bing. 362; 1 Esp. 94; and this rule prevails in Kentucky, Tennessee, North Carolina, Vermont, Illinois, and New Jersey as to tenancies from year to year; 1 Johns. 322; 22 Vt. 88; 4 Ired. 291; 3 Green, N. J. 181; 4 Kent, 113; 6 Yerg. 431; 8 Cow. 13; 18 Ill. 75; 39 Ill. 378. In Pennsylvania, South Carolina, New Hampshire, Massachusetts and Michigan, three months' notice is required; 4 Fost. 219; 8 S. & R. 458; 2 Rich. S. C. 346; 11 Penn. 472; 34 *id.* 96; 113 Mass. 214; while the New York statutes provide for its termination by giving one month's notice wherever there is a tenancy at will or by sufferance, created by the tenant holding over after the term or otherwise; 1 R. S. 745, § 7. The subject is in general governed by statutory rules too numerous and complicated to set forth.

The relation of landlord and tenant will also be *dissolved* when the tenant incurs a forfeiture of his lease by the breach of some covenant or condition therein contained. At common law a forfeiture was incurred if the tenant did any act which was inconsistent with his relation to his landlord: as if he impugned the title of his lessor by affirming by matter of record the fee to be in a stranger, claimed a greater estate than he was entitled to, or undertook to alienate the estate in fee; Co. Litt. 251 *b*, 252 *a*; Cro. Eliz. 321; 12 East, 444. But these causes of forfeiture, founded upon strict feudal principles, have been generally abolished in the United States; and a forfeiture of a term of years now only occurs in consequence of a breach of some *express* stipulation contained in the lease, as for the commission of waste, non-payment of rent, or the like; 2 Hill, 554; 7 Paige, Ch. 350; 5 B. & C. 855; 22 Md. 122; 20 Ill. 125; 32 Mich. 315. A forfeiture may be waived by an acceptance of, or distraining for, rent which became due after a breach committed by the tenant, or by giving a notice to quit, or by any other act which acknowledges the continuance of the tenancy; 8 Watts, 51; 2 N. H. 163; 18 Johns. 174; 3 H. & M. 436; 1 Binn. 333; 1 M. & W. 408; 6 Wisc. 323; 4 H. & N. 512; L. R. 7 Q.B. 344; 21 Wend. 537; 40 Mo. 449; and will be relieved against by the courts in all cases where it happened accidentally, or where the injury is capable of compensation, the damages on equitable principles being a mere matter of computation; 12 Ves. Ch. 475; 16 *id.* 405; 2 Price, 206; 1 Dall. 210; 9 Mod. 22; Story, Eq. § 1314; 62 N. Y. 486; 44 Vt. 285; and it is always at the election of the lessor to avail himself of his right of re-entry for conditions broken or not as he pleases; 6 B. & C. 519; and *vide* 7 W. & S. 41; 38 Penn. 346; 12 Barb. 440; 5 Cush. 281; 29 Conn. 331; 1 Wall. 64.

Another means of dissolving a tenancy is by an operation of law, termed a *merger*,—which happens where a tenant purchases the fee of the reversion, or the fee descends to him as heir at law, the lease becoming thereby merged in the inheritance, the lesser estate being absorbed in the greater. To produce this result, however, it is necessary that the two estates should meet in the same person and in the same right; for if he who has the reversion in fee marries the tenant for years, or if a tenant makes the landlord his executor, the term of years is in neither case merged, because in either case he holds the fee for his own benefit, while the term of years is taken in one case for his wife's use, and in the other for the benefit of the estate he represents as executor; 10 Johns. 481; 12 N. Y. 526; Co. Litt. 288 *b*; 1 Washb. R. P. 354; 1 Clark, Pa. 362; 13 Penn. 16; 35 N. Y. 279; 3 Johns. Ch. 53. But the universal current of opinion now sets

against the operation of the doctrine of merger wherever a result will be produced contrary to the intentions of the parties or prejudicial to the interests of third parties; 34 N. Y. 320; 4 Gray, 385; 4 DeG. M. & G. 474; 3 Hill, 96; 4 Paige, 403.

In addition to the several methods of putting an end to a tenancy already mentioned, we may add that it is, of course, competent for a tenant at any time *to surrender* his lease to the landlord; 117 Mass. 357; 16 Johns. 28; 19 Cal. 354. An express surrender can only be made by deed in England, since the Statute of Frauds, and this provision is in some of the states re-enacted; 2 Wils. 26; 8 Taunt. 270; 11 Wend. 616; 8 Allen, 202; 8 Wisc. 141. But a surrender by operation of law is a case excepted out of the statute; as, for example, where, during the period of the old lease, a new one, inconsistent with it in its terms, is accepted, the old lease is at an end; 8 Johns. 394; 99 Mass. 18; Taylor, Landl. & T. 512; 117 Mass. 357. If the subject-matter of the lease *wholly* perishes; 26 N. Y. 498; 118 Mass. 125; 38 Cal. 259; 11 Metc. 448; or is required to be taken for public uses; 38 Mo. 143; 20 Pick. 159; 57 Penn. 271; 119 Mass. 28; 43 N. Y. 377; or the tenant disclaims to hold under his landlord, and therefore refuses to pay his rent, asserts the title to be in himself or unlawfully attorns to another, the tenancy is at an *end*, and the landlord may forthwith resume the possession; 3 Pet. 43; 4 Wend. 633; 21 Cal. 342; 8 Watts, 55; 5 Dana, 101; 23 Gratt. 332.

After the tenancy has ended, the right of possession reverts to the landlord, who may re-enter upon the premises if he can do so without violence. But if the tenant holds over and the landlord takes possession forcibly, so as to endanger a breach of the peace, he runs the risk of being punished criminally for a forcible entry (see FORCIBLE ENTRY AND DETAINER) as well as of suffering the consequences of an action of trespass; 121 Mass. 309; 59 Me. 568; 4 Allen, 318; 4 Am. Law Rev. 429; 10 Mass. 409; 1 M. & G. 644; 1 W. & S. 90. The landlord should, therefore, in all such cases, call in the law to his assistance, and receive possession at the hands of the sheriff.

The tenant, on his part, is bound quietly to yield up the possession of the entire premises. And for refusal to perform this duty he will be subjected to all the statutory penalties of *holding over;* 12 Pick. 416; 102 Mass. 514; 51 N. Y. 509; 84 Ill. 62; 35 Penn. 45; 62 Me. 248; E. B. & E. 326. He has, however, a reasonable right of egress and regress for the purpose of removing his goods and chattels; 2 Bla. Com. 14; 24 Me. 424; L. R. 5 C. P. 334. He may, also, in certain cases, take the *emblements* or annual profits of the land after his tenancy is ended, as to which his rights are largely affected by local customs (see EMBLEMENTS), and, unless restricted by some stipulation to the contrary, may remove such *fixtures* as he has erected during his occupation for his comfort and convenience, particularly if for trade purposes. See FIXTURES.

The ordinary common-law remedy by which a landlord proceeds to recover the possession of his premises is by an action of ejectment, and in these cases it is a general rule that the tenant is never permitted, for reasons of sound public policy, to controvert his landlord's title, or to set up against him a title acquired by himself during his tenancy which is hostile in its character to that which he acknowledged in accepting the demise; 10 East, 158; 3 B. & C. 413; 7 Term, 488; 5 Wend. 246; 2 Denio, 431; 3 Ad. & E. 188; 2 Binn. 472; 15 N. Y. 327; 61 Me. 590; 54 Penn. 196; 42 Md. 81; 72 N. C. 294; 18 Wall. 431. But to this rule there are some exceptions: of these the chief are cases where the landlord's interest has expired during the lease; 2 Zab. 261; Taylor, Landl. & T. § 708; or where he has sold and conveyed the land; 10 Md. 333; 33 Ves. 383; 50 Ill. 232; 99 Mass. 15; or where the tenant has been evicted by title paramount, and accepted a new lease under the real owner of the premises; 69 Penn. 316; 66 Me. 167; 14 S. & R. 382; 32 Mich. 285.

But the slow and measured progress of the action of ejectment in most cases affords a very inadequate remedy to the landlord; and in order, therefore, to obviate the evils arising from its delays, the statutes of the different states provide a summary proceeding, by which a landlord may be speedily reinstated, upon short notice, in cases where a tenant abandons the premises before the end of the term without surrendering the lease, leaving rent in arrear, continues to hold over after the expiration of his term, or has become unable or unwilling to pay rent for the use of the premises; 22 Wend 611; Taylor, Landl. & T. § 713 *et seq.*

See, further, on the subject of this article, Woodfall, Smith, Taylor, Archbold, Comyns, Cootes, and Smith & Soden, on the Law of Landlord and Tenant; Platt on Leases; Washburn on Real Property, 468 *et seq.*

LANGUAGE. The medium for the communication of perceptions and ideas.

Spoken language is that wherein articulate sounds are used.

Written language is that wherein written characters are used, and especially the system of characters called letters and figures.

By conventional usage, certain sounds and characters have a definite meaning in one country, or in certain countries, and this is called the language of such country or countries: as, the Greek, the Latin, the French, or the English language. The law, too, has a peculiar language. See Eunom. Dial. 2.

On the subjugation of England by William the Conqueror, the French-Norman language was substituted in all law-proceedings for the ancient Saxon. This, according to Blackstone, 3 Com. 317, was the language of the records, writs, and pleadings until the time of Edward III. Mr. Stephen thinks Blackstone has fallen into an error, and says the record was, from the earliest period to which that document can be traced, in the Latin language. Plead. Appx. note

14. By the statute 36 Edw. III. st. 1, c. 15, it was enacted that for the future all pleas should be pleaded, shown, defended, answered, debated, and judged in the English tongue, but be entered and enrolled in Latin. The Norman or law French, however, being more familiar as applied to the law than any other language, the lawyers continued to employ it in making their notes of the trial of cases, which they afterwards published in that barbarous dialect under the name of Reports.

After the enactment of this statute, on the introduction of paper pleadings, they followed in the language as well as in other respects the style of the records, which were drawn up in Latin. This technical language continued in use till the time of Cromwell, when by a statute the records were directed to be in English; but this act was repealed at the restoration by Charles II., the lawyers finding it difficult to express themselves as well and as concisely in the vernacular as in the Latin tongue; and the language of the law continued as before till about the year 1730, when the statute of 4 Geo. II. c. 26, was passed. It provided that both the pleadings and the records should thenceforward be framed in English. The ancient terms and expressions which had been so long known in French and Latin were now literally translated into English. The translations of such terms and phrases were found to be exceedingly ridiculous. Such terms as nisi prius, habeas corpus, fieri facias, mandamus, and the like, are not capable of an English dress with any degree of seriousness. They are equally absurd in the manner they are employed in Latin; but use, and the fact that they are in a foreign language, have made the absurdity less apparent.

By statute of 6 Geo. II. c. 14, passed two years after the last-mentioned statute, the use of technical words was allowed to continue in the usual language,—which defeated almost every beneficial purpose of the former statute. In changing from one language to another, many words and technical expressions were retained in the new, which belonged to the more ancient language; and not seldom they partook of both. This, to the unlearned student, has given an air of confusion and disfigured the language of the law. It has rendered essential, also, the study of the Latin and French languages. This, perhaps, is not to be regretted, as they are the keys which open to the ardent student vast stores of knowledge. In the United States, the records, pleadings, and all law proceedings are in the English language, except certain technical terms which retain their ancient French and Latin dress.

Agreements, contracts, wills, and other instruments, may be made in any language, and will be enforced. Bac. Abr. *Wills* (D 1). An English court, having to construe a contract made in a foreign country and foreign language, must obtain a translation of the instrument and an explanation of the terms of art, if any; 10 H. L. C. 624. And a slander spoken in a foreign language, if understood by those present, or a libel published in such language, will be punished as if spoken or written in the English language; Bac. Abr. *Slander*, (D 3); 1 Rolle, Abr. 74; 6 Term, 163. For the construction of language, see articles CONSTRUCTION; INTERPRETATION; Jacob, Intr. to the Com. Law Max. 46.

Among diplomatists, the French language is the one commonly used. At an early period, the Latin was the diplomatic language in use in Europe. Towards the end of the fifteenth century that of Spain gained the ascendency, in consequence of the great influence which that country then exercised in Europe. The French, since the age of Louis XIV., has become the almost universal diplomatic idiom of the civilized world; though some states use their national language in treaties and diplomatic correspondence. It is usual in these cases to annex to the papers transmitted a translation in the language of the opposite party, wherever it is understood this comity will be reciprocated. This is the usage of the Germanic Confederation, of Spain, and of the Italian courts. When nations using a common language, as the United States and Great Britain, treat with each other, such language is used in their diplomatic intercourse.

See, generally, 3 Bla. Com. 323; 1 Chit. Cr. L. 415; 2 Rey, Inst. jud. de l'Angleterre, 211, 212.

LANGUIDUS (Lat.). **In Practice.** The name of a return made by the sheriff when a defendant, whom he has taken by virtue of process, is so dangerously sick that to remove him would endanger his life or health; 3 Chit. Pr. 249, 358; T. Chitty, Forms, 753.

LANZAS. In Spanish Law. A certain contribution in money paid by the grandees and other high officers in lieu of the soldiers they ought to furnish government in time of war.

LAPSE. In Ecclesiastical Law. The transfer, by forfeiture, of a right to present or collate to a vacant benefice from a person vested with such right to another, in consequence of some act of negligence by the former. Ayl. Par. 331.

Upon six months' neglect of the patron, the right lapses to the bishop; upon six months' neglect of bishop, to archbishop; upon his six months' neglect, to king. The day on which the vacancy occurs is not counted, and the six months are calculated as a half-year. 2 Burn, Ec. L. 355.

To glide; to pass slowly, silently, or by degrees. To slip; to deviate from the proper path. Webster, Dict. See LAPSED DEVISE; LAPSED LEGACY.

LAPSE PATENT. A patent issued to petitioner for land. A patent for which land to another party has lapsed through neglect of patentee. The lapse patent relates to date of original patent, and makes void all mesne conveyances. 1 Wash. Va. 39, 40.

LAPSED DEVISE. A devise which has lapsed, or does not take effect because of the death of devisee before testator.

The subject-matter of the lapsed devise will, if no contrary intention appears, be included in the residuary clause (if any) contained in the will. But, if the devise be to children or other issue of devisor, and issue of devisee be alive, the devise shall not lapse, if no such intention appear in the will. See 1 Vict. c. 26, §§ 25, 26, 32, 33. A devise always lapses at common law if the devisee

dies before testator; 3 *id.* 803, n.; but in many, if not all the states, if made to a son or grandson of the testator, it takes effect, by force of statute, in favor of his heirs, if he die before testator; so in Massachusetts, in the case of a devise to a child or *other relative;* 3 Washb. R. P. 523; 101 Mass. 38. See 1 Jarman, Wills, Perkins ed. 301, n.; 3 *id.* 803, n.; 4 Kent, 541. In regard to a lapsed devise, where the devisee dies during the life of the testator, the estate so devised will go to the heir, notwithstanding a residuary devise. But if the devise be void, as where the devisee is dead at the date of the will, or is made upon a condition precedent which never happens, the estate will go to the residuary devisee, if the words are sufficiently comprehensive; 2 Vern. 394; 15 Ves. 589; 3 Whart. 477; 1 Harr. 524; 4 Kent, 541, 542. But some of the cases hold in that case, even, that the estate goes to the heir; 6 Conn. 292; 4 Ired. Eq. 320; 13 Md. 415. By the English law a residuary bequest operates upon all the personal estate which the testator is possessed of at the time of his death, and will include such as would have gone to pay specific legacies which lapse or are void; 4 Ves. Ch. 708, 732; 4 Paige, Ch. 115; 6 *id.* 600; 4 Hawks, 215; 1 Dana, 206; 1 D. & B. Eq. 115, 116; 82 Penn. 428; 1 Jarm. Wills, 585–599.

LAPSED LEGACY. A legacy which, on account of the death of the legatee before the period arrives for the payment of the legacy, lapses or deviates from the course prescribed by the testator, and falls into the residuum. 1 Williams, Ex. 1036; 10 S. & R. 351.

A distinction exists between a lapsed devise and a lapsed legacy. A devise which lapses does not fall into the residue unless so provided by the will, but descends to the heir at law; on the contrary, personal property passes by the residuary clause, where it is not otherwise disposed of; 2 Bouv. Inst. 2158–2161. See LAPSED DEVISE.

LARCENY. In Criminal Law. The wrongful and fraudulent taking and carrying away by one person of the mere personal goods of another from any place, with a felonious intent to convert them to his the taker's use, and make them his property without the consent of the owner. 2 East, Pl. Cr. 553; 4 Wash. C. C. 700. Robbery is a form of compound larceny; 2 Bish. Cr. L. 757; 23 Ind. 21.

In a recent English case, Mr. Baron Parke said that this definition, which was the most complete of any, was defective, in not stating what is the meaning of the word "felonious," which, he said, "may be explained to mean that there is no color of right or excuse for the act; and the 'intent' must be to deprive the owner, not temporarily, but permanently, of his property." Regina *vs.* Holloway, 2 C. & K. 942; 1 Den. Cr. Cas. 370; Templ. & M. 40. It is safer to be guided by the cases than by the definitions given by text-writers. *Per Coltman*, J. Several definitions are collected by Mr. Bishop, 2 Cr. Law, § 675, n., to which reference is made.

Larceny was formerly in England, and still is, perhaps, in some states, divided into *grand* and *petit* or *petty* larceny, according as the value of the property taken was great or small; 2 East, Pl. Cr. 736; 3 M'Cord, 187; 3 Hill, N. Y. 395; 6 *id.* 144; 1 Hawks, 463; 8 Blackf. 498. Yet in England this distinction is now abolished, by 7 & 8 Geo. IV. c. 29, § 2; and the same is true of many of the United States, although in some a difference is made, similar in theory, between cases where the amount stolen is more and where it is less than one hundred dollars or some fixed sum.

Compound larceny is larceny under circumstances which, in view of the law, aggravate the crime. The law in relation to this branch of larceny is to a great extent statutory.

The property of the owner may be either general; 1 C. & K. 518; 2 Den. Cr. Cas. 449; or special; 10 Wend. 165; 14 Mass. 217; 13 Ala. N. S. 153; 21 Me. 14; 8 Tex. 115; 4 Harr. Del. 570; 6 Hill, 144; 9 C. & P. 44.

There must be a taking against the consent of the owner; 8 C. & P. 291; 9 *id.* 365; 1 Den. Cr. Cas. 381; 2 Ov. 68; 9 Yerg. 198; 20 Ala. N. S. 428; 1 Rich. 30; 2 N. & M'C. 174; Coxe, N. J. 439; and the taking will uot be larceny if consent be given, though obtained by fraud; 15 S. & R. 93; 9 C. & P. 741; 4 Taunt. 258; 7 Cox, Cr. Cas. 289. But where one retains money paid by mistake, it is larceny, for the consent of the owner in parting with his property was only apparent, not real; 8 Oreg. 394; s. c. 34 Am. Rep. 590; 6 Hun, 121. Whenever the defendant can be regarded in the light of the servant or agent of the owner, he is guilty of larceny; 1 Denio, 120; Whar. Cr. Law, §§ 956-971. By stat. 24 & 25 Vict. c. 96, a bailee who fraudulently converts the property entrusted to him, to his own use is guilty of larceny; Cox & Saunders, Crim. Law, 26, 27. When the *possession* of an article is intrusted to a person, who carries it away and appropriates it, this is no larceny; 24 E. L. & Eq. 562; 4 C. & P. 545; 5 *id.* 533; 1 Pick. 375; 20 Ala. N. S. 428; 17 N. Y. 114; see 2 M'Mull. 382; 2 C. & K. 983; 4 Mo. 461; 33 Me. 127; 11 Cush. 483; 13 Gratt. 803; 11 Tex. 769; but when the *custody* merely is parted with, such misappropriation is a larceny; 6 T. B. Monr. 130; 1 Denio, 120; 11 Q. B. 929; 1 Den. Cr. Cas. 584.

The decisions have not been entirely uniform as to whether the fraudulent retention of money delivered to be changed, is larceny. It has been held in England, not to be so, but here the contrary view has been taken; 56 N. Y. 394; 25 Minn. 66; s. c. 33 Am. Rep. 455, n. See 9 C. & P. 741; 11 Cox's Cr. Cas. 32.

The taking must be in the county where the criminal is to be tried; 9 C. & P. 29; Ry. & M. 349. But when the taking has been in the county or state, and the thief is caught with the stolen property in another county than that where the theft was committed, he may be tried in the county where arrested with the goods; as, by construction of law, there is a fresh taking in every county in which the thief carries the stolen property;

7 Metc. 175. Whether an indictment for larceny can be supported where the goods are proved to have been originally stolen in another state, and brought thence into the state where the indictment is found, is a point on which the decisions are contradictory. Where property was stolen in one of the British Provinces and brought by the thief into Massachusetts, it was held not larceny there; 3 Gray, 434. See, *contra*, 11 Vt. 650.

There must be an actual removal of the article; 1 Leach, 236, n., 320; 3 Greenl. Ev. § 154; 7 C. & P. 552; 8 *id.* 291; 8 Ala. N. S. 328; 12 Ired. 157; 9 Yerg. 198; but a very slight removal, if it amount to an actual taking into possession, is sufficient; 2 East, Pl. Cr. 556, 617; 1 C. & K. 245; Dearsl. 421.

The property must be personal; and there can be no larceny of things affixed to the soil; 1 Hale, Pl. Cr. 510; 11 Ired. 477; 8 C. & P. 293; 35 Cal. 671; 54 Ala. 238; but if once severed by the owner, a third person, or the thief himself, as a separate transaction, it becomes a subject of larceny; 11 Ired. 70; 3 Hill, N. Y. 395; 1 Mod. 89; 2 Rolle, 89; 7 Taunt. 188. The common law rule has been modified from time to time in England, so as to afford protection to things fixed to the freehold. The rule was never satisfactory, and the courts in modern times have been inclined to confine it within the narrowest limits; 30 Am. Rep. 159, n.; S. C. 4 Tex. Ct. App. 26; 11 Ohio, 104. It must be of some value, though but slight; 4 Rich. 356; 3 Harr. Del. 563; 7 Metc. 475. See 8 Penn. 260; 6 Johns. 103; 9 C. & P. 347. At common law there cannot be larceny of animals, in which there is neither an absolute nor a qualified property, as beasts *ferœ naturœ*; 1 Greene, 106; 7 Johns. 16; 1 C. & K. 494; but otherwise of animals reclaimed or confined, as deer, or rabbits in a park, fish in a tank, pheasants, etc., in a mew; all valuable domestic animals, and all animals *domitœ naturœ*, which serve for food. But all other animals which do not serve for food, as dogs, unless taxed, are not subjects of larceny. But oysters, when planted for use, are so, as is the flesh of dead animals; 1 Whart. Cr. Law, §§ 864-875. But under statute in some of the states there may be larceny of dogs, and actions may be maintained for injury to them; 4 Parker, C. C. 386; 27 Ala. 480; 11 Kans. 480; S. C. 15 Am. Rep. n.; see article in 2 Alb. Law Jour. 101.

See Hale, Hawkins, Pleas of the Crown; Wharton, Bishop, Gabbett, Russell, Criminal Law; Roscoe, Criminal Evidence.

LAS PARTIDAS. The name of a code of Spanish law. It is sometimes called *las siete partidas*, or the seven parts, from the number of its principal divisions. It is a compilation from the civil law, the customary law of Spain, and the canon law. It was compiled by four Spanish jurisconsults, under the eye of Alphonso X., A. D. 1250, and published in Castile in 1263, but first promulgated as law by Alphonso XI., A. D. 1348. The maritime law contained in it is given in vol. 6 of Pardess. Col. of Mar. Law. He follows the editions of 1807, at Paris. It has been translated into English. Such of its provisions as are applicable are in force in Florida, Louisiana, and Texas. 1 Bla. Com. 66; 1 Rec. 354.

LASCIVIOUS CARRIAGE. In Connecticut. A term including those wanton acts between persons of different sexes, who are not married to each other, that flow from the exercise of lustful passions, and which are not otherwise punished as crimes against chastity and public decency. 2 Swift, Dig. 343; 2 Swift. Syst. 331. It includes, also, indecent acts by one against the will of another. 5 Day, 81.

LAST HEIR. He to whom the lands come if they escheat for want of lawful heirs: viz., sometimes the lord of whom the lands are held, sometimes the king. Bract. lib. 5, c. 17.

LAST SICKNESS. That of which a person dies.

The expenses of this sickness are generally entitled to a preference in payment of debts of an insolvent estate. La. Civ. Code, art. 3166.

To prevent impositions, the statute of frauds requires that nuncupative wills shall be made during the testator's last sicknsss. Roberts, Frauds, 556; 20 Johns. 502.

LAST WILL (Lat. *ultima voluntas*). A disposition of real estate to take effect after death.

It is strictly distinguishable from testament, which is applied to personal estate, 1 Wms. Exec. 6, n. *b*, Amer. notes; but the words are generally used together, "last will and testament," in a will, whether real or personal estate is to be disposed of. See WILL.

LASTAGE.

A custom anciently exacted in some fairs and markets to carry things where one will; also a custom paid for goods sold by the last (a certain weight or measure); the ballast of a ship. Cowel. Stowage room for goods in a vessel. Young, Naut. Dic.

LATENT AMBIGUITY. One which does not appear on the face of the instrument. A latent ambiguity is where words apply equally to two different things or subject matters; 15 M. & W. 561; but where the parties may have intended either of the two things in dispute, the term does not apply; 10 Ohio, 534. See AMBIGUITY; MAXIMS, *Ambiguities*.

LATERAL SUPPORT. A person's right to the support of the land immediately around his house is not so much an easement, as it has been called, as it is the ordinary right of enjoyment of property. Where a house is injured as an indirect effect of the improper working of mines, the right of action arises at the time the mischief is felt, and the statute of limitations runs from that time; 9 H. L. 503. See SUPPORT

LATHE, LATH (L. Lat. *laestrum* or

leda. Law Fr. and Eng. Dict.). A division of certain counties in England, intermediate between a county or shire and a hundred, sometimes containing three or four hundreds, as in Kent and Sussex. Cowel. But in Sussex the word used for this division is *rape*. 1 Bla. Com. 116. There was formerly a lathe-reeve or bailiff in each *lathe*. *Id*. This division into *lathes* continues to the present day. See 12 E. 244. In Ireland, the *lathe* was intermediate between the tything and the hundred. Spencer, Ireland. See T. L.

LATIDEMEO. In Spanish Law. The tax paid by the possessor of land held by quit-rent or emphyteusis to the owner of the estate, when the tenant alienates his right in the property.

LATIFUNDIUM (Lat.). **In Civil Law.** Great or large possessions; a great or large field; a common. Ainsworth. A great estate made up of smaller ones (*fundis*), which began to be common in the latter times of the empire. Schmidt, Civ. Law, Introd. p. 17.

LATIFUNDUS (Lat. *late possidens*). A possessor of a large estate made up of smaller ones. Du Cange.

LATITAT (Lat. he lies hid). **In English Law.** The name of a writ calling a defendant to answer to a personal action in the king's bench. It derives its name from a supposition that the defendant lurks and lies hid, and cannot be found in the county of Middlesex (in which the said court is holden) to be taken there, but is gone into some other county, and therefore requiring the sheriff to apprehend him in such other county. Fitz. N. B. 78. Abolished by stat. 2 Wm. IV. c. 39.

LAUDIMIUM, LAUDATIOREM (Lat. *a laudando domino*). A fiftieth part of the purchase-money or (if no sale) of the value of the estate paid to the landlord (*dominus*) by a new *emphyteuta* on his succession to the estate, not as heir, but as singular successor. Voetius, Com. ad Pand. lib. 6, tit. 3, §§ 26–35; Mack. C. L. 297.

In Old English Law. The tenant paid a *laudimium* or acknowledgment-money to the new landlord on the death of the old. See Blount, *Acknowledgment-Money*.

LAUNCH. The movement by which a ship or boat descends from the shore into the water when she is first built, or afterwards.

A large, long, low, flat-bottomed boat. Mar. Dict. The long-boat of a ship. R. H. Dana. A small vessel employed to carry the cargo of a large one to and from the shore.

The goods on board of a launch are at the risk of the insurers till landed; 5 Mart. La. N. S. 387. The duties and rights of the master of a launch are the same as those of the master of a lighter.

When the master of a vessel agreed to take cotton on board his vessel from the cotton-press, and employed a steam-lighter for that purpose, and the cotton was lost by an explosion of the steam-boiler of the lighter, it was held that his vessel was liable *in rem* for the loss; 23 Bost. L. Rep. 277.

LAW. That which is laid down; that which is established. A rule or method of action, or order of sequences.

The rules and methods by which society compels or restrains the action of its members.

The aggregate of those rules and principles of conduct which the governing power in a community recognizes as the rules and principles which it will enforce or sanction, and according to which it will regulate, limit, or protect the conduct of its members.

A rule of civil conduct prescribed by the supreme power in a state. 1 Steph. Com. 25.

A rule or enactment promulgated by the legislative authority of a state; a long-established local custom which has the force of such an enactment; 10 Pet. 18.

The doctrines and procedure of the common law of England and America, as distinguished from those of equity.

An oath. So used in the old English practice, by which wager of law was allowed. See WAGER OF LAW.

Perhaps few terms whose use requires equal precision serve in so many diverse meanings as the term law. In its root it signifies that which is laid down, that which is established. "In the largest sense," says Montesquieu (Esprit des Lois, b. 1, ch. 1), "laws are the necessary relations which arise from the nature of things; and, in this sense, all beings have their laws, God has his laws, the material universe has its laws, intelligences superior to man have their laws, animals have their laws, man has his laws. In this sense, the idea of a command proceeding from a superior to an inferior is not necessarily involved in the term law. It is frequently thus used to denote simply a statement of a constant relation of phenomena. The laws of science, thus, are but generalized statements of observed facts." "It is a perversion of language," says Paley, "to assign any law as the efficient operative cause of any thing. A law presupposes an agent: this is only the mode according to which an agent proceeds."

In its relation to human affairs there is a broad use of the term, in which it denotes any of those rules and methods by which a society compels or restrains the action of its members. Here the idea of a command is more generally obvious, and has usually been thought an essential element in the notion of human law.

A distinction is to be observed in the outset between the abstract and the concrete meaning of the word. That which is usually intended by the term "laws" is not coextensive with that which is intended by the term "law." In the broadest sense which it bears when used in the abstract, law is a science. It treats of the theory of government, the relation of states to each other and to individuals, and the rights and obligations of states, of individuals, and of artificial persons and local communities among themselves and to each other.

An analysis of the science of law presents a view, *first*, of the rights of persons, distinguishing them as natural persons and artificial persons, or bodies politic or corporations. These rights are deemed either *absolute*, as relating to the enjoyment of personal security, liberty, and of private property, or, on the other hand, as *relative*,—that is, arising out of the relation in

which several persons stand. These relations are either (1) *public* or *political*, viz.: the relation of magistrates and people; or, (2) *private*, as the relations of master and servant, husband and wife, parent and child, guardian and ward, to which might be added relations arising out of private contracts, such as partnership, principal and agent, and the like. Under the head of the rights of persons as arising out of public relations may be discussed the constitution and polity of the state, the distribution of powers among the various departments of the government, the political status of individuals, as aliens, citizens, and the like.

In the *second* place, the analysis presents the rights of property, which is divided into personal property or chattels, viz., that which is movable, and real property, or that which is immovable, viz., lands, including nearly all degrees of interest therein, as well as such chattels as by a peculiar connection with land may be deemed to have lost their character as legally movable: these rights of property are viewed in respect to the origin of title, the transmission of title, and the protection of the enjoyment thereof.

In the *third* place, the analysis presents a view of private wrongs, or those injuries to persons for which the law provides a redress for the aggrieved party; and under this head may be considered the tribunals through which the protection of rights or the redress of wrongs may be obtained, and the various modes of procedure to those ends.

Lastly, the analysis presents a view of public wrongs, or crimes and misdemeanors, in which may be considered the theory of crime and punishment, the persons capable of committing crimes, the several degrees of guilt of principals and accessaries, the various crimes of which the law takes cognizance,—as, those against religion, those against the state and its government, and those against persons and property,—with the punishment which the law affixes to each, and also the tribunals and precedure by which crimes threatened may be prevented, and crimes committed may be punished; Bla. Com.

In a stricter sense, but still in the abstract, law denotes the aggregate of those rules and principles of conduct which the governing power in a community recognizes as the rules and principles which it will enforce or sanction, and according to which it will regulate, limit, or protect the conduct of members of the community.

It is the *aggregate* of legal rules and principles, as distinguished from any particular rule or principle. No one statute, nor all statutes, constitute the law of the state; for the maxims of the courts and the regulations of municipal bodies, as well as, to some extent, the universal principles of ethics, go to make up the body of the law. It includes *principles*, which rest in the common sense of justice and right, as well as positive rules or regulations, which rest in ordinance. It is the aggregate of the rules or principles only which the *governing power* in the community recognizes, because that power, whether it be deemed as residing in a monarch, an aristocracy, or in the people at large, is the source of the authority and the sanction of those rules and principles. It is the aggregate of those rules and principles which are *recognized* as the law by that power, rather than those which are actually enforced in all cases; for a statute is none the less a law because the community forbear to enforce it, so long as it is officially recognized by them as that which, in theory at least, should be enforced; nor does a departure from the law by the governing power in itself abrogate the law. It comprises not only those rules and principles which are to be enforced, but also those which are simply permissive; for a very large part even of modern statute-law—which is commonly defined as a rule commanding or prohibiting—in reality neither commands nor prohibits, except in the most distant and indirect sense, but simply authorizes, permits, or sanctions; and this is much more generally true of those principles of the law which rest in custom and the adjudications of the courts. It is only those which relate to the *members of the community* in question; for laws, as such, have no extra-territorial operation.

The earliest notion of law was not an enumeration of a principle but a judgment in a particular case. When pronounced in the early ages, by a king, it was assumed to be the result of direct divine inspiration. Afterwards came the notion of a custom which a judgment affirms, or punishes its breach. In the outset, however, the only authoritative statement of right and wrong is a judicial sentence rendered after the fact has occurred. It does not presuppose a law to have been violated, but is enacted for the first time by a higher form into the judge's mind at the moment of adjudication. Maine, Anc. Law, (Dwight's ed.) pp. xv. 5.

The idea of law has commonly been analyzed as composed of three elements: (1) a *command* of the lawgiver, which command must prescribe not a single act merely, but a series or class of acts; (2) an *obligation* imposed thereby on the citizen; (3) a *sanction* threatened in the event of disobedience; Benth. Frag. on Gov.; Austin, Province, etc.; Maine, Anc. Law. Thus, municipal law is defined as "a rule of civil conduct prescribed by the supreme power in the state, commanding what is right and prohibiting what is wrong." 1 Bla. Com. 44. The latter clause of this definition has been much criticized. Mr. Chitty modifies it to "commanding what shall be done or what shall not be done" (*id. note*); and Mr. Stephen omits it, defining law as "a rule of civil conduct prescribed by the supreme power in a state." 1 Stephen, Com. 25. It is also defined as a rule of conduct contained in the command of a sovereign addressed to the subject. (Encyc. Brit.) These definitions, though more apt in reference to statutes and edicts than to the law in general, seem, even in reference to the former sort of law, to look rather at the usual form than the invariable essence of the thing. The principle of law, that a promise without a consideration is void, neither commands men to provide a consideration for every promise nor forbids them to promise without consideration, for this is lawful; nor does it forbid them to fulfil such promises. It simply amounts to this, that if men choose to break such promises, society will interfere to enforce them. And even many statutes have no form of a command or prohibition; and, moreover, some that are such in form are not in reality. An enactment that no action shall be brought on a simple contract after the lapse of six years from the time the cause of action accrued cannot aptly be said to command men to bring actions within six years, nor even, in fact, to forbid them to bring such actions after that time; for it is still lawful to sue on an outlawed demand, and, if the defendant do not object, the plaintiff may succeed. It may be deemed a command in so far as it is a direction to the court to dismiss such actions; but as a rule of civil conduct it amounts simply to this, that when an obligation has become stale to a certain degree, society will sanction the debtor in repudiating it.

When used in the concrete, the term usually has reference to statutes or expressions of the legis-

lative will. "The *laws* of a state," observes Mr. Justice Story, "are more usually understood to mean the rules and enactments promulgated by the legislative authority thereof, or long-established local customs having the force of laws." 16 Pet. 18. Hence, he argues, "in the ordinary use of language it will hardly be contended that the decisions of courts constitute laws." In the Civil Code of Louisiana they are defined to be "the solemn expression of the legislative will."

But, as has already been said, "law" in the abstract involves much more. Thus, a reference in a statute to "the cases provided by law" includes not only those cases provided by former statutes, but also those contemplated by the common or unwritten law; 18 N. Y. 115.

The law of the land, an expression used in Magna Charta and adopted in most of the earlier constitutions of the original states, means, however, something more than the legislative will: it requires the due and orderly proceeding of justice according to the established methods. See DUE PROCESS OF LAW; 8 Gray, 329.

When the term law is used to denote enactments of the legislative power, it is frequently confined, especially by English writers, to permanent rules of civil conduct, as distinguished from other acts, such as a divorce act, an appropriation bill, an estates act. Report of Eng. Stat. L. Com., Mar. 1856.

In the United States, the organic law of a state is termed the constitution, and the term "laws" generally designates statutes or legislative enactments, in contradistinction to the constitution. See STATUTES.

Law, as distinguished from equity, denotes the doctrine and procedure of the common law of England and America, from which equity is a departure.

Distinct courts of equity still exist in New Jersey, Maryland, Kentucky, Delaware, Tennessee, Mississippi, and Alabama. The judges of the common law courts are invested with the powers of a court of chancery in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Pennsylvania, Virginia, West Virginia, North Carolina, Georgia, Illinois, Texas, Florida, Michigan, Iowa, Arkansas, and Oregon. In all the other states the distinction between law and equity is abolished.

Law is also used in contradistinction to fact. Questions of law are, in general, for the decision of the court; while it is for the jury to pass upon questions of fact.

In respect to the ground of the authority of law, it is divided as natural law, or the law of nature or of God, and positive law.

Arbitrary law. A law or provision of law so far removed from considerations of abstract justice that it is necessarily founded on the mere will of the law-making power, so that it is rather a rule established than a principle declared. The principle that an infant shall not be bound by his contract is not arbitrary; but the rule that the limit of infancy shall be twenty-one years, not twenty nor twenty-two, is arbitrary.

The term is also sometimes used to signify an unreasonable law,—one that is in violation of justice.

Irrevocable laws. All laws which have not in their nature or in their language some limit or termination provided are, in theory, perpetual; but the perpetuity is liable to be defeated by subsequent abrogation. It has sometimes been attempted to secure an absolute perpetuity by an express provision forbidding any abrogation. But it may well be questioned whether one generation has power to bind their posterity by an irrevocable law. See this subject discussed by Bentham, Works, vol. 2, 402–407; and see Dwarris, Stat. 479.

Municipal law is a system of law proper to any single state, nation, or community. See MUNICIPAL LAW.

A *penal law* is one which inflicts a penalty for its violation.

Positive law is the system naturally established by a community, in distinction from natural law. See POSITIVE LAW.

Private law is a term used to indicate a statute which relates to private matters which do not concern the public at large.

A *prospective law* or statute is one which applies only to cases arising after its enactment, and does not affect that which is already past.

A *public law* is one which affects the public, either generally or in some classes.

A *retrospective law* or statute is one that turns backward to alter that which is past or to affect men in relation to their conduct before its enactment. These are also called *retroactive laws.* In general, whenever a retroactive statute would take away vested rights or impair the obligation of contracts, it is in so far void, because opposed to the constitution of the United States; 3 Dall. 391. But laws which only vary the remedies, or merely cure a defect in proceedings otherwise fair, are valid; 10 S. & R. 102, 103; 15 *id.* 72; 2 Pet. 380, 627; 8 *id.* 88; 11 *id.* 420. See EX POST FACTO.

For mattters peculiar to the following classes of laws, see their several titles:—

AGRARIAN LAWS; BREHON LAW; CANON LAW; CIVIL LAW; CODES; COLONIAL LAW; COMMERCIAL LAW; CONSTITUTIONAL LAW; CONSEUTUDINARY LAW; CORN LAWS; CRIMINAL LAWS; CROWN LAW; ECCLESIASTICAL LAW; EDICTAL LAW; EX POST FACTO LAWS; FECIAL LAW; FEUDAL LAW; FOREIGN LAW; GAME LAWS; GENTOO LAW; GREEN CLOTH LAW; HINDU LAW; INSOLVENCY; LAWS OF OLERON; MAHOMMEDAN LAW; MARTIAL LAW; MILITARY LAW; RHODIAN LAW; STATUTES OF WISBUY.

See, generally, Maine, Bentham, Austin.

LAW BORGH. **In Old Scotch Law.** A pledge or surety for appearance.

LAW-BURROWS. **In Scotch Law.** Security for the peaceful behavior of a party; security to keep the peace. This process was much resorted to by the government of Charles II. for political purposes.

LAW COURT OF APPEALS. **In American Law.** An appellate tribunal, formerly existing in the state of South Carolina, for hearing appeals from the courts of law.

LAW DAY. The day fixed in a mortgage or defeasible deed for the payment of the debt secured. 24 Ala. N. S. 149; 10 Conn. 280; 21 N. Y. 345. This does not occur now until foreclosure, and the use of the term is confusing; 21 N. Y. 343.

In Old English Law. Law day or lage day denoted a day of open court; especially the more solemn courts of a county or hundred. The court-leet, or view of frankpledge.

LAW FRENCH. From the time of William the Norman down to that of Edward III., all public proceedings and documents in England, including the records of the courts, the arguments of counsel, and the decisions of the judges, were in the language of the Norman-French. After Latin and English were substituted in the records and proceedings, however, the cases and decisions continued until the close of the seventeenth century to be reported in French; the first reports published in English being those of Styles in 1658. The statutes of the reign of Henry III. and some of the subsequent reigns are partly or wholly in this language; but English was substituted in the reign of Henry VII. Of the law-treatises in French, the Mirrour and Britton, and the works of Littleton, may be mentioned.

LAW OF THE LAND. Due process of law. 2 Yerg. 50; 6 Penn. 86; 73 *id.* 370; 60 Me. 504; 4 Hill, N. Y. 140. See DUE PROCESS OF LAW.

LAW LATIN. Edward III. substituted the Latin language for the Norman-French in the records, and the English in other proceedings. The Latin was used by virtue of its being the language of scholars of all European nations; but, in order to adapt it to the purpose of the profession, the English terms of legal art in most frequent use were Latinized by the simple addition of a Latin termination, and the diverse vocabulary thus collected was arranged in English idioms. But this barbarous dialect commended itself by a semblance of scholarly sound, and more by the precision which attaches to technical terms that are never used in popular language. During the time of Cromwell, English was used; but with the restoration Latin was reinstated, and held its place till 4 Geo. II. ch. 26, when it was enacted that, since the common people ought to know what was done for and against them, proceedings should be in English. It was found, however, that certain technical terms had become so fixed that by a subsequent act such words were allowed to continue in use; 6 Geo. II. ch. 14. Hence a large class of Latin terms are still in use, of which *nisi prius*, *habeas corpus*, *lis pendens* are examples. Consult 3 Bla. Com. 318–323; and as to particular words and phrases, Termes de la Ley; Taylor's Law Gloss.; the Law-French and Law-Latin Dictionary; Kelham's Dic.; Du Cange.

LAW LIST. In English Law. An annual publication of a quasi-official character, comprising various statistics of interest in connection with the legal profession.

LAW LORDS. In English Law. Peers who have held high judicial office, or have been distinguished in the legal profession. Moz. & W.

LAW MERCHANT. The general body of commercial usages in matters relative to commerce. Blackstone calls it the *custom of merchants*, and ranks it under the head of the particular customs of England, which go to make up the great body of the common law; 1 Bla. Com. 75. Since, however, its character is not local, nor its obligation confined to a particular district, it cannot with propriety be considered as a *custom* in the technical sense; 1 Steph. Com. 54. It is a system of law which does not rest exclusively on the positive institutions and local customs of any particular country, but consists of certain principles of equity and usages of trade which general convenience and a common sense of justice have established, to regulate the dealings of merchants and mariners in all the commercial countries of the civilized world; 3 Kent, 2.

These usages, being general and extensive, partake of the character of rules and principles of law, not of matters of fact, as do usages which are local or special. They constitute a part of the general law of the land, and, being a part of that law, their existence cannot be proved by witnesses, but the judges are bound to take notice of them *ex officio;* Winch, 24; and this application is not confined to merchants, but extends to all persons concerned in any mercantile transaction. See Beawes, Lex Mercatoria Rediviva; Caines, Lex Mercatoria Americana; Comyns, Dig. *Merchant* (D); Chitty, Com. Law; Pardessus, Droit Commercial; Collection des Lois maritimes antérieure au dix-huitième Siècle, par Dupin; Capmany, Costumbres Maritimas; Il Consolato del Mare; Us et Coutumes de la Mer; Piantandia, Della Giurisprudenze Maritima Commerciale, Antica e Moderna; Valin, Commentaire sur l'Ordonnance de la Marine, du Mois d'Août, 1681; Boulay-Paty, Droit Comm.; Boucher, Institutions au Droit Maritime; Parsons, Marit. Law; Smith, Merc. Law.

LAW OF MARQUE. See LETTER OF MARQUE AND REPRISAL.

LAW OF NATIONS. See INTERNATIONAL LAW.

LAW OF NATURE. That law which God, the sovereign of the universe, has prescribed to all men, not by any formal promulgation, but by the internal dictate of reason alone. It is discovered by a just consideration of the agreeableness or disagreeableness of human actions to the nature of man; and it comprehends all the duties which we owe either to the Supreme Being, to ourselves, or to our neighbors: as, reverence to God, self-defence, temperance, honor to our

parents, benevolence to all, a strict adherence to our engagements, gratitude, and the like; Erskine, Pr. Sc. Law, 1. 1. 1. See Ayliffe, Pand. tit. 2, p. 2; Cicero, de Leg. lib. 1.

The primitive laws of nature may be reduced to six, namely: comparative sagacity, or reason; self-love; the attraction of the sexes to each other; the tenderness of parents towards their children; the religious sentiment; sociability.

When man is properly organized, he is able to distinguish moral good from moral evil; and the study of man proves that man is not only an intelligent but a free being, and he is therefore responsible for his actions. The judgment we form of our good actions produces happiness; on the contrary, the judgment we form of our bad actions produces unhappiness.

Every animated being is impelled by nature to his own preservation, to defend his life and body from injuries, to shun what may be hurtful, and to provide all things requisite to his existence. Hence the duty to watch over his own preservation. Suicide and duelling are, therefore, contrary to this law; and a man cannot mutilate himself, nor renounce his liberty.

The attraction of the sexes has been provided for the preservation of the human race; and this law condemns celibacy. The end of marriage proves that polygamy and polyandry are contrary to the law of nature. Hence it follows that the husband and wife have a mutual and exclusive right over each other.

Man from his birth is wholly unable to provide for the least of his necessities; but the love of his parents supplies for this weakness. This is one of the most powerful laws of nature. The principal duties it imposes on the parents are to bestow on the child all the care its weakness requires, to provide for its necessary food and clothing, to instruct it, to provide for its wants, and to use coercive means for its good, when requisite.

The religious sentiment which leads us naturally towards the Supreme Being is one of the attributes which belong to humanity alone; and its importance gives it the rank of the moral law of nature. From this sentiment arise all the sects and different forms of worship among men.

The need which man feels to live in society is one of the primitive laws of nature whence flow our duties and rights; and the existence of society depends upon the condition that the rights of all shall be respected. On this law are based the assistance, succors, and good offices which men owe to each other, they being unable to provide each every thing for himself.

LAW OF THE STAPLE. See LAW MERCHANT.

LAWFUL. Legal. That which is not contrary to law. That which is sanctioned or permitted by law. That which is in accordance with law. The terms "lawful," "unlawful," and "illegal" are used with reference to that which is in its *substance* sanctioned or prohibited by the law. The term "legal" is occasionally used with reference to matter of *form* alone: thus, an oral agreement to convey land, though void by law, is not properly to be said to be unlawful, because there is no violation of law in making or in performing such an agreement; but it is said to be not legal, or not in lawful form, because the law will not enforce it, for want of that written evidence required in such cases.

LAWFUL AGE.

Majority. This usually means twenty-one years, but in some of the states, for certain purposes, a woman attains lawful age at eighteen; 4 Md. Ch. 228.

LAWFUL AUTHORITIES.

The expression "lawful authorities," used in our treaty with Spain, refers to persons who exercised the power of making grants by authority of the crown; 9 Pet. 711.

LAWFUL DISCHARGE.

Such a discharge in insolvency as exonerates the debtor from his debts; 12 Wheat 370.

LAWFUL GOODS.

Whatever is not prohibited to be exported by the positive law of the country, even though it be countraband of war, for a neutral has a right to carry such goods at his own risk; 1 Johns. Cas. 1; 2 *id.* 77; *id.* 120.

LAWFUL ISSUE.

In a devise to A for life, and on her death to her lawful issue, etc., these words are to be given the same effect as "heirs;" 3 Edw. 1; 21 Tex. 804. Under the term lawful issue, bastards cannot take a remainder in a life estate to the mother; 10 B. Mon. 188.

LAWFULLY POSSESSED.

In a statute concerning forcible entry and detainer, is equivalent to peaceably possessed; 45 Mo. 35.

LAWFUL MONEY. Money which is a legal tender in payment of debts: *e. g.* gold and silver coined at the mint. 2 Salk. 446; 5 Mod. 7; 3 Ind. 358; 2 How. 244; 3 *id.* 717; 16 Ark. 83. See Hempst. 236.

LAWING OF DOGS. Mutilating the fore-feet of mastiffs, to prevent them from running after deer. 3 Bla. Com. 71.

LAWLESS COURT. An ancient local English court, said to have been held in Essex once a year, at cock-crowing, without a light or pen and ink, and conducted in a whisper.

LAWLESS MAN. An outlaw.

LAWSUIT. An action at law, or litigation. This is, however, only the vernacular expression for a case before the courts in which there is a controversy between two parties. Technically we speak of a suit in admiralty or equity, an action at law, a prosecution in a criminal court, etc. The term lawsuit may include an arbitration; 7 Cow. 434.

LAWYER. One skilled in the law.

Any person who, for fee or reward, prosecutes or defends causes in courts of record, or other judicial tribunals of the United States, or of any of the states, or whose business it is to give legal

advice in relation to any cause or mattter whatever. Act of July 13, 1866, § 9, Stat. at L. 121.

LAY. In English Law. That which relates to persons or things not ecclesiastical. In the United States, the people are not by law divided, as in England, into ecclesiastical and lay. The law makes no distinction between them. The word is also used in the sense of opposed to professional. Also applied to a share of the profits of a fishing or whaling voyage, allotted to the officers and seamen, in the nature of wages; 3 Story, 108.

In Pleading. To state or to allege. The place from whence a jury are to be summoned is called the venue, and the allegation in the declaration of the place where the jury is to be summoned is, in technical language, said to *lay the venue*. 3 Steph. Com. 574; 3 Bouvier, Inst. n. 2830.

LAY CORPORATION. A corporation composed of lay persons or for lay purposes. They are either civil or eleemosynary. Ang. & A. Corp. 28–30; 1 Bla. Com. 470.

TO LAY DAMAGES. To state at the conclusion of the declaration the amount of damages which the plaintiff claims.

LAY DAYS. In Maritime Law. The time allowed to the master of a vessel for loading and unloading the same. In the absence of any custom to the contrary, Sundays are to be computed in the calculation of lay days at the port of discharge; 10 M. & W. 331. See 3 Esp. 121; 3 Kent, 202; 2 Steph. Com. 141. They differ from DEMURRAGE, which see.

LAY FEE. A fee held by ordinary feudal tenure, as distinguished from the ecclesiastical tenure of *frankalmoign*, by which an ecclesiastical corporation held of the donor. The tenure of *frankalmoign* is reserved by stat. 12 Car. II., which abolished military tenures. 1 Bla. Com. 101.

LAY IMPROPRIATOR. Lay rector, to whom the greater tithes are reserved, the lesser going to the vicar. 1 Burn, Eccl. Law, 75, 76.

LAY INVESTITURE. See INVESTITURE; ANNULUS ET BACULUS.

LAY OUT. This term has come to be used technically in highway laws as embracing all the series of acts necessary to the complete establishment of a highway; 28 Conn. 363; 121 Mass. 382. See 11 Ired. 94.

LAY PEOPLE. Jurymen. Finch, Law, 381.

LAYMAN. In Ecclesiastical Law. One who is not an ecclesiastic nor a clergyman.

LAZARET, LAZARETTO. A place, selected by public authority, where vessels coming from infected or unhealthy countries are required to perform quarantine. See HEALTH.

LE ROI S'AVISERA, or LA REINE S'AVISERA. The king will consider of it. This phrase is used by the English monarch when he gives his dissent to an act passed by the lords and commons. This power was last exercised in the year 1707, by Queen Anne; May, P. L. ch. 18. The same formula was used by the king of the French for the same purpose. 1 Toullier, n. 52. See VETO.

LE ROI LE VEUT. The king assents. This is the formula used in England, and formerly in France, when the king approved of a bill passed by the legislature. 1 Toullier, n. 52.

LE ROI VEUT EN DELIBERER. The king will deliberate on it. This is the formula which the king of the French used when he intended to veto an act of the legislative assembly. 1 Toullier, n. 42.

LEADING A USE. A term applied to a deed executed before a fine is levied, declaring the use of the fine: *i. e.* specifying to whose use the fine shall enure. If executed after the fine, it is said to *declare* the use. 2 Bla. Com. 363. See DEED.

LEADING CASE. A case decided by a court of last resort, which decides some particular point in question, and to which reference is constantly or frequently made, for the purpose of determining the law in similar questions.

Many elements go to the constitution of a case as a leading case: among which are, the priority of the case, the character of the court, the amount of consideration given to the question, the freedom from collateral matters or questions. The term is applied to cases as leading either in a particular state or at common law. A very convenient means of digesting the law upon any subject is found to be the selection of a leading case upon the subject, and an arrangement of authorities illustrating the questions decided. See B. & H. Lead. Crim. Cas. 2 v.; Smith, Lead. Cas. 2 v.; Sm. L. Cas. Comm. L.; Hare & W. Sel. Dec. 2 v.; Tudor, Cas. R. P. 1 v.; Tudor, L. Cas. M. L. 1 v.; Sedgwick, Damages; Bigelow, Torts; Redf. & Bigel., Bills & Notes; Redfield, Railw. Cas., and a variety of others.

The French Causes Célèbres correspond to the English state trials.

LEADING COUNSEL. That one of two or more counsel employed on the same side in a cause who has the principal management of the cause. Sometimes called the leader. So called as distinguished from the other, who is called the *junior counsel*.

LEADING QUESTION. In Practice. A question which puts into the witness's mouth the words to be echoed back, or plainly suggests the answer which the party wishes to get from him. 7 S. & R. 171; 4 Wend. 247. In that case the examiner is said to *lead* him to the answer. It is not always easy to determine what is or is not a leading question.

These questions cannot, in general, be put to a witness in his examination in chief; 3

Binn. 130; 6 *id.* 483; 1 Phill. Ev. 221; 1 Stark. Ev. 123. But, in an examination in chief, questions may be put to lead the mind of the witness to the subject of inquiry; and they are allowed when it appears the witness wishes to conceal the truth or to favor the opposite party, or where, from the nature of the case, the mind of the witness cannot be directed to the subject of inquiry without a particular specification of such subject; 1 Campb. 43; 1 Stark. 100.

In cross-examinations, the examiner has generally the right to put leading questions; 1 Stark. Ev. 132; 3 Chitty, Pr. 892; Rosc. Civ. Ev. 94; Whart. Ev. §§ 501–504; but not perhaps when the witness has a bias in his favor; Best, Ev. 805.

LEAGUE. A measure of length, which consists of three geographical miles. The jurisdiction of the United States extends into the sea a marine league. See Acts of Congress of June 5, 1794, 1 Story, Laws, 352; and April 20, 1818, 3 Story, Laws, 1694; 1 Wait, State Papers, 195.

A conspiracy to do an unlawful act. The term is but little used.

An agreement or treaty between states. Leagues between states are of several kinds: *First*, leagues offensive and defensive, by which two or more nations agree not only to defend each other, but to carry on war against their common enemies. *Second*, defensive, but not offensive, obliging each to defend the other against any foreign invasion. *Third*, leagues of simple amity, by which one contracts not to invade, injure, or offend the other: this usually includes the liberty of mutual commerce and trade, and the safeguard of merchants and traders in each other's domain. Bacon, Abr. *Prerogative* (D 4). See CONFEDERACY; CONSPIRACY; PEACE; TRUCE; WAR.

LEAKAGE. The waste which has taken place in liquids, by their escaping out of the casks or vessels in which they were kept. See 107 Mass. 140, 145.

By the act of March 2, 1799, s. 59, 1 Story, Laws, 625, it is provided that there be an allowance of two per cent. for leakage on the quantity which shall appear by the gauge to be contained in any cask of liquors subject to duty by the gallon, and ten per cent. on all beer, ale, and porter in bottles, and five per cent. on all other liquors in bottles, to be deducted from the invoice quantity, in lieu of breakage; or it shall be lawful to compute the duties on the actual quantity, to be ascertained by tale, at the option of the importer, to be made at the time of entry.

LEAL. Loyal; that which belongs to the law.

LEAP YEAR. See BISSEXTILE.

LEASE. A species of contract for the possession and profits of lands and tenements either for life or for a certain period of time, or during the pleasure of the parties.

One of its essential properties is, that its duration must be for a shorter period than the duration of the interest of the lessor in the land; for if he disposes of his entire interest it becomes an *assignment*, and is not a lease. In other words, the granting of a lease always supposes that the grantor reserves to himself a reversion in the leased premises.

And a distinction is to be noted between a lease and a mere agreement for a lease. The whole question, however, resolves itself into one of construction, and an instrument is to be considered either a lease or an agreement for a lease, according to what appears to be the intention of the parties; 1 Term, 735; 26 Pick. 401; 16 Barb. 621; 9 Ad. & E. 644; though, generally, if there are apt words of demise followed by possession, the instrument will be held a lease; 5 *id.* 74; 8 N. Y. 44; 3 C. & P. 441; 8 Bingh. 178; 102 Mass. 392; 4 Ad. & E. 225; 5 B. & A. 322; otherwise, if a fuller lease is to be prepared and executed before the demise is to take effect and possession to be given; 21 Vt. 172; 24 Wend. 201; 3 Stor. 325; 4 Conn. 238; 75 Ill. 44; L. R. 2 Ex. Div. 355; 5 B. & C. 41; 14 Abb. Pr. 372.

The party who leases is called *the lessor*, he to whom the lease is made *the lessee*, and the compensation or consideration of the lease is *the rent*. The words *lease* and *demise* are frequently used to signify the estate or interest conveyed; but they properly apply to the instrument of conveyance. When a lessee parts with the estate granted to him, reserving any portion thereof, however small, he makes an *underlease*; Taylor, Landl. & Ten. § 16; 5 Denio, 454; 36 N. Y. 569; 12 Iowa, 319; 16 Johns. 159.

The estate created by a lease, when for years, is called *a term* (*terminus*), because its duration is limited and determined,—its commencement as well as its termination being ascertained by an express agreement of the parties. And this phrase signifies not only the limitation of time or period granted for the occupation of the premises, but includes also the estate or interest in the land that passes during such period. A term, however, is perfected only by the entry of the lessee; for previous to this the estate remains in the lessor, the lessee having a mere right to enter, which right is called an *interesse termini*; 1 Washb. R. P. 292, 297; 5 B. & C. 111; 5 Co. 123 *b*; Co. Litt. 46, B.; Cro. Jac. 60; 1 B. & Ald. 593; 1 Br. & B. 238.

Any thing corporeal or incorporeal lying in livery or in grant may be the subject-matter of a lease; and therefore not only lands and houses, but commons, ways, fisheries, franchises, estovers, annuities, rent charges, and all other incorporeal hereditaments, are included in the common-law rule; Shepp. Touchst. 268; 110 Mass. 175; 24 Mich. 279; 33 N. Y. 251; 66 Me. 229; 17 C. E. Green, 130; 27 Conn. 164. Rent cannot properly be said ever to issue out of chattels; 3 H. & M. 470; 35 Barb. 295; 15 Ohio, N. S. 186; 5 Rep. 16; but goods, chattels, or live stock upon or about real property may be leased with it and a rent contracted for, to issue from the whole, upon which an action for rent in arrear may be maintained as upon such lease; Co. Litt. 57 *a*; 31 Penn. 20; 24 Wend. 76; 9 Paige, 310.

Leases are made either by *parol* or by *deed*. The former mode embraces all cases where the parties agree either orally or by a writing not under seal. The technical words generally made use of in the written instrument are, "*demise, grant, and to farm let*;" but no particular form of expression is required

in any case to create an immediate demise; 8 Bing. 182; 9 Ad. & E. 650; 5 Term, 168; 4 Burr. 2208; 5 Scott, 531; 15 Wend. 379; 111 Mass. 30; 71 Ill. 317; 7 Blackf. 403; 12 Me. 135; 6 Watts, 362; 1 Denio, 602; Williams, R. P. 327. Any permissive holding is, in fact, sufficient for the purpose, and it may be contained in any written memorandum by which it appears to have been the intention of one of the parties voluntarily to dispossess himself of the premises for any given period, and of the other to assume the possession for the same period; Taylor, Landl. & Ten. § 26; 1 Washb. R. P. 300. The English statute of frauds (29 Charles II. c. 3), first required all leases exceeding three years to be in writing. In *Alabama*, *Arkansas*, *California*, *Connecticut*, *Delaware*, *Illinois*, *Iowa*, *Kansas*, *Kentucky*, *Michigan*, *Minnesota*, *Mississippi*, *Montana*, *Nebraska*, *Nevada*, *New York*, *Rhode Island*, *Texas*, *Utah*, *Oregon*, *Tennessee*, *West Virginia*, *Wyoming*, *Virginia*, *and Wisconsin*, leases for one year only are excepted from the requirement that they should be in writing. In *Georgia*, *Maryland*, *New Jersey*, *North Carolina*, *Pennsylvania*, and *South Carolina*, the law is as in *England*. It is two years in *Florida*. While in *Vermont*, *Ohio*, *New Hampshire*, *Missouri*, *Massachusetts*, *Maine*, and *Indiana*, all leases not in writing are declared mere estates at will. See Browne on Stat. of Frauds, App.

A written agreement is generally sufficient to create a term of years. But in England, by statute, all leases that are required to be in writing must also be under seal; 8 & 9 Vict. c. 106. In *Massachusetts* and *Maryland*, leases for more than seven years must be by deed. So in *Virginia*, of those for more than five, and in *Delaware*, *Rhode Island*, and *Vermont*, of those for more than one.

All persons seised of lands or tenements may grant leases of them, unless they happen to be under some legal disability: as, of unsound mind, immature age, or the like; 8 C. & P. 679. See, as to infants, 10 Pet. 65; 7 Cow. 179; 11 Johns. 539; 3 Mod. 310. Contracts by them are voidable only and not void, and may be affirmed or disaffirmed by them on attaining their majority; 17 Wend. 119; 12 Vt. 28; 11 Johns. 539; 6 Conn. 494. As to persons of unsound mind, see 3 Camp. 126; 51 N. Y. 384; 11 Pick. 304; 8 C. & P. 679; intoxicated persons, 2 Paige, 30; 18 Ves. 16; 4 Harr. 285; married women, Smith, Landl. & T. 48; 1 Taylor, Landl. & T. § 101. See PARTIES; CONTRACTS. But it is essential to the validity of a lease that the lessor has, at the time he undertakes to make the grant, possession of the premises; otherwise, whatever he does will amount to nothing more than the assignment of a *chose in action;* Cro. Car. 109; Shep. Touchst. 269. But possession is always presumed to follow the title unless there is a clearly marked adverse possession.

And although a lease may not be sufficient to authorize a lessee to demand possession for the want of a possessory title in his lessor, it will still operate by way *of estoppel*, and enure to his benefit if the lessor afterwards comes into possession of the land before the expiration of the lease; Bacon, Abr. *Leases* (I 4); Cro. Eliz. 109; 28 Barb. 240; 61 N.Y. 6; 7 M. & G. 701; 3 Pick. 52; 18 How. 82; 6 Watts, 60; 2 Hill, N.Y. 554; 16 Johns. 110, 201; 5 Ark. 693.

The power to lease will, of course, depend upon the extent of the lessor's estate in the premises; and if he has but an estate for life, his lease can only be coextensive therewith; when for a term of years, its commencement as well as its termination must be ascertained, for certainty in these respects is of the essence of a term of years. But although this term may not at first appear to be certain, it may be rendered so by reference to some fact or event; *id certum est quod certum reddi potest.* Thus, if a lease be made to a man for so many years as he has in the manor of Dale, and he happens to have a term of two years in that manor, the lease will be good for that period; Co. Litt. 45 *b*; 3 Term, 463; 4 East, 29; 1 M. & W. 533; 3 Co. 346; 97 Mass. 206; 102 Mass. 93; 10 R. I. 355.

Lord Coke states that, originally, express terms could not endure beyond an ordinary generation of forty years, lest men might be disinherited; but the doctrine had become antiquated even in his day, and at the present time there is no limitation to a term of years except in the state of New York, where land cannot be leased for agricultural purposes for a longer period than twelve years; see Co. Litt. 45 *b*, 46 *a*; 9 Mod. 101; 13 Ohio, 334; 1 Platt, Leas. 3; 1 Washb. R. P. 310; 41 N. Y. 480; 62 N. Y. 524.

In all leases of uncertain duration, or if no time has been agreed upon for the continuation of the term, or if after the expiration of a term the tenant continues to hold over, without any effort on the part of the landlord to remove him, the tenancy is at the will of either party. And it remains at will until after the payment and receipt of rent on account of a new tenancy, or until the parties concur in some other act which recognizes the existence of a tenancy, from which event it becomes a tenancy from year to year, invested with the qualities and incidents of the original tenancy. After this, neither party has a right to terminate it before the expiration of the current year upon which they have entered, nor then without having first given due notice to the other party of his intention to do so. The length of this notice is regulated by the statutes of the different states; 11 Wend. 616; 13 Johns. 109; 8 Term, 3; 4 Ired. 294; 3 Zabr. 111. See LANDLORD AND TENANT.

The *formal parts* of a lease by deed are: *first, the date*, which will fix the time for its commencement, unless some other period is specified in the instrument itself for that purpose; but if there is no date, or an impossible

one, the time will be considered as having commenced from the delivery of the deed; 2 Johns. 230; 15 Wend. 656; 4 B. & C. 908; 17 Wend. 103. *Second, the names* of the parties, with respect to which the law knows but one Christian name; and therefore the middle letter of the name of either party is immaterial, and a person may always show he is as well known by one name as another; 14 Pet. 322; 36 Ill. 362; 55 N. Y. 380. The entire omission of the lessee's name from a lease will render the instrument simply void; 11 Com. 129; 8 Md. 118; 24 N. Y. 336; 6 Allen, 305; 19 Iowa, 290; 2 Wall. 24. *Third, recitals of title* or other circumstances of the case. *Fourth*, some *consideration* must appear, although it need not be what is technically called *rent*, or a periodical render of compensation for the use of the premises; but it may be a sum in gross, or the natural affection which one party has for the other. It may also consist in grain, animals, or the personal services of the lessee; 3 Hill, N. Y. 345; 1 Speers, 408; Taylor, Landl. & T. § 152. *Fifth*, the *operative* words of the lease are usually "*demise, grant, lease, and to farm let;*" 50 N. Y. 414; 53 N. H. 513; 27 Md. 173. *Sixth*, the *description* of the premises need not specify all the particulars of the subject-matter of the demise, for the accessories will follow the principal thing named: thus, the garden is parcel of a *dwelling-house*, and the general description of *a farm* includes all the houses and lands appertaining to the farm; 9 Conn. 374; 5 Johns. 446; 11 C. E. Green, 82; 4 Rawle, 330; 9 Cow. 747. But whether certain premises are parcel of the demise or not is always matter of evidence; 14 Barb. 434; 3 B. & C. 870; 14 B. Mon. 8. *Seventh*, the rights and liabilities of the respective parties are regulated by law in the absence of any particular agreement in respect thereto; but express covenants are usually inserted in a lease, for the purpose of limiting or otherwise defining their rights and duties in relation to repairs, taxes, insurance renewals, residence on the premises, modes of cultivation, fixtures, and the like. Certain covenants are also implied in law from the use of certain technical terms in leases.

In every well-drawn lease, provision is made for a *forfeiture* of the term in case the tenant refuses to pay rent, commits waste, or is guilty of a breach of the covenant to repair, insure, reside upon the premises, or the like. This clause enables the lessor or his assigns to *re-enter* in any such event upon the demised premises and eject the tenant, leaving both parties in the same condition as if the lease were a nullity; but in the absence of a proviso for re-entry the lessor would possess no such power, the mere breach of a covenant enabling him to sue for damages only; 11 Mod. 61; 3 Wils. 127; 2 Cow. 591; 2 Overton, 233; 1 Dutch. 285; 15 Cal. 233. The forfeiture will generally be enforced by the courts, except where the landlord's damages are a mere matter of computation and can be readily compensated by money; 7 Johns. 235; 4 Munf. 332; 2 Price, 200; 44 Vt. 285; 9 Hare, 683; 5 R. I. 144; 60 Penn. 131; 20 Vt. 415; 31 Conn. 468; 40 N. H. 434. But in case of a forfeiture for the non-payment of rent, the proviso is allowed to operate simply as a security for rent, and the tenant will be relieved from its effects at any time by paying the landlord or bringing into court the amount of all arrears of rent, with interest and costs.

A lease may also be *terminated* before the prescribed period if the premises are required to be taken for public uses or improvements, or the subject-matter of demise wholly perishes or is turned into a house of ill fame; 24 Wend. 454; 29 Barb. 116; 119 Mass. 28; 46 N. Y. 297; 38 Mo. 143; 58 Penn. 271; 118 Mass. 125; 38 Cal. 259; 11 Cush. 600; 5 Ohio, 303. The same result will follow when the tenant purchases the fee, or the fee descends to him as heir at law; for in either case the lease is *merged* in the inheritance; since there would be a manifest inconsistency in allowing the same person to hold two distinct estates immediately expectant on each other, while one of them includes the time of both, thus uniting the two opposite characters of landlord and tenant; 10 Johns. 482; 2 C. & P. 347; 26 Ill. 19; 6 Johns. Ch. 417; 13 Penn. 16; Taylor, Landl. & T. § 502. See LANDLORD AND TENANT.

LEASE AND RELEASE. A species of conveyance much used in England, consisting theoretically of two instruments, but which are practically united in the same instrument.

It was invented by Sergeant Moore, soon after the enactment of the statute of uses. It is thus contrived: a lease, or rather bargain and sale upon some pecuniary consideration for one year, is made by the tenant of the freehold to the lessee or bargainee. This, without any enrolment, makes the bargainor stand seised to the use of the bargainee, and vests in the bargainee the use of the term for one year, and then the statute immediately annexes the *possession*. Being thus in possession, he is capable of receiving a release of the freehold and reversion, which must be made to the tenant in possession, and accordingly the next day a release is granted to him.

The lease and release, when used as a conveyance of the fee, have the joint operation of a single conveyance; 2 Bla. Com. 339; 4 Kent, 482; Co. Litt. 207; Cruise, Dig. tit. 32, c. 11.

LEASEHOLD. The estate held by virtue of a lease. In practice the word is generally applied to an estate for a fixed term of years.

LEASING-MAKING. In Scotch Law. Verbal sedition, viz.: slanderous and untrue speeches to the disdain, reproach, and contempt of his majesty, his council and pre-

ceedings, etc. Bell, Dict.; Erskine, Inst. 4. 4. 29.

LEAVE OF COURT. Permission granted by the court to do something which, without such permission, would not be allowable.

The statute of 4 Ann. c. 16, s. 4, provides that it shall be lawful for any defendant or tenant in any action or suit, or for any plaintiff in replevin, in any court of record, with *leave of the court*, to plead as many several matters thereto as he shall think necessary for his defence. The principles of this statute have been adopted by most of the states of the Union.

When the defendant, in pursuance of this statute, pleads more than one plea in bar to one and the same demand or thing, all of the pleas except the first should purport to be pleaded with *leave of the court*. But the omission is not error nor cause of demurrer; Lawes, Pl. 132; 2 Chitty, Pl. 421; Story, Eq. Pl. 72, 76; Gould, Pl. c. 8, § 21; Steph. Pl. 272; Andr. 109; 3 N. H. 523.

Asking leave of court to do any act is an implied admission of jurisdiction of the court, and in those cases in which the objection to the jurisdiction must be taken, if at all, by plea to the jurisdiction, and it can be taken in no other way, the court, by such asking leave, becomes fully vested with the jurisdiction. Bacon, Abr. *Abatement* (A); Bacon, Abr. *Pleas, etc.* (E 2); Lawes, Pl. 91; 6 Pick. 391. But such admission cannot aid the jurisdiction except in such cases.

LECTOR DE LETRA ANTIQUA. In Spanish Law. The person duly authorized by the government to read and decipher ancient documents and titles, in order to entitle them to legal effect in courts of justice.

LEDGER. In Commercial Law. A book in which are inscribed the names of all persons dealing with the person who keeps it, and in which there is a separate account, composed generally of one or more pages for each. There are two parallel columns, on one of which the party named is the debtor, and on the other the creditor, and presents a ready means of ascertaining the state of the account. As this book is a transcript from the day-book or journal, it is not evidence *per se*.

LEDGER-BOOK. In Ecclesiastical Law. The name of a book kept in the prerogative courts in England. It is considered as a roll of the court, but, it seems, it cannot be read in evidence. Bacon, Abr.

LEGACY. A gift of personal property by last will and testament. The term is more commonly applied to a bequest of money or chattels, although sometimes used with reference to a charge upon real estate; 2 Will. Exec. (6 Am. ed.) 1051; see 9 Cush. 297; 1 Law Rep. 107; 5 Term, 716; 1 Burr. 268; 7 Ves. Ch. 391, 522.

An *absolute legacy* is one given without condition, to vest immediately; 1 Vern. Ch. 254; 2 *id.* 181; 5 Ves. Ch. 461; 19 *id.* 83; Comyns, Dig. *Chancery* (I 4).

An *additional*, or, more technically, a *cumulative, legacy* is one given to a legatee to whom a legacy has already been given. It may be given by the same will in which a legacy has been already bequeathed, or by a codicil thereto; 1 Bro. C. C. 90; 10 Johns. 156; 17 Ohio, 597; 22 Conn. 371; as to when such second legacy will be held a mere repetition of a prior bequest; see 2 L. C. Eq. 346.

An *alternate legacy* is one by which the testator gives one of two or more things without designating which.

A *conditional legacy* is a bequest whose existence depends upon the happening or not happening of some uncertain event; 1 Roper, Leg. (3d ed.) 645. The condition may be either *precedent*; 2 Conn. 196; 9 W. & S. 103; 17 Wend. 393; 14 N. H. 315; 10 Cush. 129; or *subsequent*; 25 Me. 529; 33 N. H. 285; 3 Pet. 376.

A *demonstrative legacy* is a bequest of a certain sum of money, stock, or the like, with reference to a particular fund for payment; Will. Exec. (6 Am. ed.) 360; 23 N. H. 154; 19 Gratt. 438; 10 Penn. 387; 2 Dev. & B. Eq. 453; 16 N. Y. 365.

A *general legacy* is one so given as not to amount to a bequest of a particular thing or money of the testator, distinguished from all others of the same kind; 1 Roper, Leg. (3d ed.) 170; 8 N. Y. 516; 6 Madd. 92.

An *indefinite legacy* is a bequest of things which are not enumerated or ascertained as to numbers or quantities: as, a bequest by a testator of all his goods, all his stocks in the funds; Lowndes, Leg. 84; Swinburne, Wills, 485; Ambl. 641; 1 P. Wms. 697; of this class are generally residuary legacies.

A *lapsed legacy* is one which, in consequence of the death of the legatee before the testator or before the period for vesting, has never vested; Swinb. b. t. 7, s. 23, pl. 1; 2 W. & S. 450; 1 P. Wms. 83; 1 Bro. C. C. 84; 4 DeG. M. & G. § 633.

A *legacy for life* is one in which the legatee is to enjoy the use of the legacy for life.

A *modal legacy* is a bequest accompanied with directions as to the mode in which it should be applied for the legatee's benefit: for example, a legacy to Titius to put him an apprentice; 2 Vern. Ch. 431; Lowndes, Leg. 151.

A *pecuniary legacy* is one of money. Pecuniary legacies are most usually general legacies, but there may be a specific pecuniary legacy, for example, of the money in a certain bag; 1 Roper, Leg. (3d ed.) 150, n.

A *residuary legacy* is a bequest of all the testator's personal estate not otherwise effectually disposed of by his will; Lowndes, Leg. 10; Bacon, Abr. *Legacies* (I); 6 H. L. Cas. 217.

A *specific legacy* is a bequest of a specified part of the testator's personal estate, distinguished from all others of the same

kind; 3 Beav. 349; 20 Me. 105; 3 Rawle, 237; 23 N. H. 154; L. R. 20 Eq. 308.

All natural persons and all corporations are capable of becoming legatees, unless prohibited by statute or alien enemies. Legacies to the subscribing witnesses to a will are by statute often declared void; see 2 Will. Exec. (6th Am. ed.) 1053 *et seq.*; 19 Ves. Ch. 208; 3 Russ. Ch. 437; 1 Bla. Com. 442; L. R. 13 Eq. 381; 106 Mass. 474; 1 Moo. & R. 288. Bequests to superstitious uses are prohibited by many of the English statutes; 2 Beav. 151; 2 Mylne & K. 897; 5 Mylne & C. 11; 1 Salk. 162; 2 Vern. 266. But in the United States the free toleration of all religious opinions would seem to make it almost impossible to hold any use superstitious; 1 Watts, 218; 1 Bright. 346; 2 Dana, 170. But the courts will not intervene to support and maintain a legacy for any purpose which is illegal or subversive of public policy; 63 Penn. 465. Bequests to charitable uses are favored both in England and the United States. See CHARITY. The cases are extensively collated in 2 Will. Exec. (6th Am. ed.) 1055; 4 Kent, 508; 2 How. 127; 4 Wheat. 1; 7 Johns. Ch. 292; 20 Ohio, 483; 10 Penn. 23; 11 Vt. 296; 5 Cush. 336; 12 Conn. 113; Saxt. Ch. 577; 3 Leigh, 450; 2 Ired. Eq. 9, 210; 5 Humphr. 170; 11 Beav. 481; 14 *id.* 357; 10 Hare, 446. Legacies which would otherwise be void for uncertainty or perpetuity are sustained if for charitable uses; 14 Allen, 550; 38 Conn. 366; 15 How. 367; 7 R. I. 252. In those states where the principles of the statute of Elizabeth in regard to charitable uses are recognized in the equity courts, the decisions have been liberal in upholding bequests for the most diverse objects and expressed in the most general terms; 17 S. & R. 88; 2 Ired. Eq. 210; 1 Gilm. 336; 7 Vt. 241; 2 Sandf. Ch. 46; 7 B. Monr. 617, 618–622; 2 How. 127; 9 Penn. 433; 7 Johns. Ch. 292; 10 Allen, 177; 25 Md. 518; 2 Dana, 170; 24 How. 465; 15 Ohio St. 537; 28 Penn. 23; 59 Me. 332; 38 Conn. 362; 43 N. Y. 424; 2 Perry, Trusts, § 748, note 1; 33 Md. 699. In Virginia, the stat. of 43 Eliz. c. 4, has been repealed; 3 Leigh, 450; 15 Gratt. 423.

Construction of legacies. *First*, the technical import of words is not to prevail over the obvious intent of the testator; 3 Term, 86; 11 East, 246; 16 *id.* 221; 6 Ad. & E. 167; 7 M. & W. 1, 481; 1 M. & K. 571; 2 *id.* 659; 2 Russ. & M. 546; L. R. 11 Eq. 280; 2 Mass. 56; 11 Pick. 257, 375; 13 *id.* 41, 44; 2 Metc. Mass. 191, 194; 1 Root, 332; 1 Nott & M'C. 69; 12 Johns. 389; 36 Me. 216; 58 Penn. 427; 51 N. H. 443; 64 Me. 490; 10 S. & R. 150. *Second*, where technical words are used by the testator, or words of art, they are to have their technical import, unless it is apparent they were not intended to be used in that sense; 6 Term, 352; 3 Brown, Ch. 68; 4 Russ. Ch. 386, 387; 1 Younge & J. 512; 4 Ves. Ch. 329; 8 *id.* 306; Dougl. 341; 5 Mass. 500; 8 *id.* 3; 2 M'Cord, 66; 5 Denio, 646; 75 Penn. 220; 3 Green, 218; 1 Sumn. 239; 18 N. Y. 417; 25 Wend. 119. The particular intent will always be sacrificed to the general intent; 1 Burr. 38; 7 Term, 531; 11 Gray, 469; 70 Penn. 335; 106 Mass. 24; 26 Mo. 590; 6 Peters, 68. *Third*, the intent of the testator is to be determined from the whole will; 1 Swanst. 28; 1 Coll. Ch. 681; 8 Term, 122; 3 Pet. 377; 4 Rand. 213; 8 Blackf. 387; 100 Mass. 342; 51 N. H. 83, 78 Penn. 40; 35 Ind. 198; 52 N. Y. 450, 22 Me. 413. *Fourth*, every word shall have effect, if it can be done without defeating the general purpose of the will, which is to be carried into effect in every reasonable mode; 6 Ves. 102; 2 B. & Ald. 448; 2 Bla. Com. 381; 3 Pick. 360; 7 Ired. Eq. 267; 10 Humphr. 368; 2 Md. 82; 6 Pet. 68; 1 Jarm. Wills, 404–412; 9 H. L. Cas. 420; 40 N. H. 500; 53 Penn. 106; 12 Gratt. 196; 19 N. Y. 348. But where it is impossible to form a consistent whole the latter part will prevail; 6 Ves. 100; 1 Phill. C. C. 333; 5 Beav. 100; 52 Me. 287; 52 N. Y. 12; 29 Penn. 234; 75 *id.* 225; 78 *id.* 484. *Fifth*, the will will be favorably construed to effectuate the testator's intent, and to this end, words may be transposed, supplied, or rejected; Hob. 75; 15 East, 309; 21 Beav. 143; 7 H. L. Cas. 68; 2 Bligh, 1; 8 Sim. 184; 30 Iowa, 294; 4 Rich. Eq. 22; 63 N. C. 381; 7 Gill. & J. 311; 105 Mass. 338; 22 Me. 429; L. R. 14 Eq. 54; 10 Wheat. 204; 35 Md. 198; 54 Penn. 245; 20 Ohio St. 416. *Sixth*, in the case of a will of personalty made abroad, the *lex domicilii* must prevail, unless it appear the testator had a different intent; Story, Confl. Laws, §§ 479 *a*, 479 *m*, 490, 491; 1 DeG. F. & J. 404; L. R. 1 H. L. 401; 99 Mass. 136; 52 Me. 165; 34 N. Y. 584; 1 Cranch, 38; 14 How. 426. *Seventh*, a will of personalty speaks from the time of testator's death; 8 DeG. M. & G. 391; 8 Paige, 104; 34 N. Y. 201; 22 N. H. 434; 21 Conn. 610; 41 Barb. 50.

Whether cumulated or repeated Where a testator has twice bequeathed a legacy to one person it becomes a question whether the legatee is entitled to both or one only. Where there is *internal evidence* of the intention of the testator, that intention is to be carried out; 2 Beav. 215; 7 *id.* 107; 3 Hare, 620; 2 Drur. & W. Ch. 133; 3 Ves. Ch. 462; 5 *id.* 369; 17 *id.* 462; 2 Sim. & S. 145; 4 Hare, 219; L. R. 3 Ch. Div. 738; 10 Johns. 156; 4 Harr. N. J. 127; 1 Zabr. 573; and evidence will be received in support of the apparent intention, but not against it; 5 Madd. 351; 2 Beav. 115; 1 My. & K. 589; 2 Brown, Ch. 528; 4 Hare, 216; 1 Drur. & W. Ch. 94, 113. Where there is no such internal evidence, the following positions of law appear established. *First*, if the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, in that case he can

claim the benefit of only one legacy; Toller, Exec. 335; 2 Hare, 432. *Second*, where two legacies of quantity of equal amount are bequeathed to the same legatee in one and the same instrument, there also the second bequest is considered a mere repetition, and he shall be entitled to one legacy only; 1 Brown, Ch. 30; 4 Ves. Ch. 75; 3 Mylne & K. 29; 10 Johns. 156. See 4 Gill, 280; 1 Zabr. 573; 16 Penn. 127; 5 De G. & S. 698; 16 Sim. 423. *Third*, where two legacies of quantity of unequal amount are given to the same person in the same instrument, the one is not merged in the other, but the latter shall be regarded as cumulative, and the legatee entitled to both; Finch, 267; 2 Brown, C. C. 225; 3 Hare, 620. *Fourth*, where two legacies are given *simpliciter* to the same legatee by different instruments, in that case also the latter shall be cumulative, whether its amount be equal; 1 Cox, 392; 17 Ves. Ch. 34; 1 Coll. Ch. 495; 4 Hare, 216; or unequal to the former; 1 Chanc. Cas. 801; 1 P. Wms. 423; 5 Sim. 431; 7 *id.* 29; 1 Mylne & K. 589; 4 H. L. Cas. 393; 1 De G. F. & J. 183; L. R. 12 Eq. Cas. 525; *id.* 7 Ch. App. 448. And see 1 Cox, 392; 1 Brown, Ch. 272; 2 Beav. 215; 2 Drur. & W. 133; 1 Bligh, N. S. 491; 1 Phill. 294. See, generally, on this subject notes to Hooley *vs.* Hatton, 2 Lead. Cas. Eq. *346.

Description of legatee.—Children. This may have reference to the time of the testator's death, or that of making the will. The former is the presumed intention, unless from the connection or circumstances the latter is the apparent intent, in which case it must prevail; 4 Brown, 55; Ambl. 397; 2 Cox, 191, 192; 11 Sim. 42; 2 Will. Exec. (6th Am. ed.) 1089; 11 Gill & J. 185; 21 Conn. 16; 59 Me. 325; 2 Dev. & B. 30; 101 Mass. 132; 54 N. Y. 83.

This term will include a child *in ventre sa mère;* 2 H. Bla. 399; 1 Sim. & S. 181; 2 Cox, 425; 1 Meigs, 149; 5 S. & R. 38; 15 Pick. 255; 30 Penn. 173; L. R. 1 Ch. Div. 460. Where the division of a fund to legatees is postponed until a certain event or period the word "child" will apply to all those answering that description when the fund is to be divided; 8 Ves. 38; 9 Leigh, 79; 1 Hill, Ch. 322; 1 McCarter, 159; 4 Sandf. 36; 101 Mass. 138. But it will sometimes have a more restricted application, and thus be confined to children born before the death of the testator. But children born after the period of distribution take no share; L. R. 12 Eq. 427; 45 N. H. 270; 8 Conn. 49; 5 Jones, Eq. 208; 1 Pars. 347; 1 Houst. 561. And it will make no difference that the bequest is to children begotten, or to be begotten, or which "may be born;" 2 Mylne & K. 46; 14 Beav. 453; 10 Sim. 317; 5 R. I. 318; 1 Rop. Leg. (3 ed.) 51; unless such be the testator's clear intent; 19 Ves. 566; 16 Gray, 305; 4 Sneed, 254; 4 R. I. 121; 3 Head, 493; 3 Jones, Eq. 490; 2 Jarman, Wills, 84.

"Children," when used to designate one's heirs, may include grandchildren; 12 B. Monr. 115, 121; 5 Penn. 365; 37 N. Y. 42; 63 Mass. 289; 33 Me. 464; 5 Binn. 606. But if the word children is used, and there are persons to answer it, then grandchildren cannot be comprehended under it; 4 Myl. & C. 60; L. R. 11 Eq. 91; 29 Md. 443; 14 Allen, 205; 6 C. E. Green. 85; 2 Whart. 376; 5 Ired. Eq. 421; 4 Watts, 82. The general rule is, that a bequest to a man and his children, he having children living at the time the will takes effect, creates a joint estate in the father and children; but if he have no children, he takes an absolute estate; 5 Sim. 548; 2 You. & Coll. 478; L. R. 12 Eq. 316; L. R. 14 Eq. 415; L. R. 7 Ch. App. 253; 3 Pick. 360; 5 Gray, 336. But in both cases slight circumstances will warrant the court in decreeing the limitation to be for life to the father, with remainder over to the children; 4 Madd. 361; 13 S. & R. 68; 16 B. Mon. 309; 1 Bailey, Eq. 357; 5 Jones, Eq. 219; 23 Ala. 705.

The term children will not include illegitimate children, if there are legitimate to answer the term; 1 Younge, 354; 2 Russ. & M. 336; see 2 Will. Exec. (6 Am. ed.) 1100, and note (2); otherwise, it may or may not, according to circumstances; 1 Ves. & B. 422; 1 Bail. Eq. 351; 6 Ired. Eq. 135; 9 Paige, 88; 2 Smed. 625; 1 Roper, Leg. 80; L. R. 10 Eq. 160; L. R. 1 Ch. Div. 644; 37 Conn. 429; L. R. 7 H. L. 576; L. R. 4 P. C. 164. But a legacy to a natural child of a certain man still *in ventre sa mère* is void, as contravening public morals and decency; 1 P. Wms. 529; 2 My. & R. 769; L. R. 3 Ch. Div. 773. The term grandchildren will not usually include great-grandchildren; 3 Ves. & B. 59; 4 My. & C. 60; 8 Beav. 247. A bequest to "my beloved wife," not mentioning her by name, applies exclusively to the wife at the date of the will, and is not to be extended to an after-taken wife; 1 Russ. & M. 629; 8 Hare, 131; L. R. 8 Eq. Cas. 65; 31 Beav. 398. One not lawfully married may, nevertheless, take a legacy by the name or description of the wife of the one to whom she is reputed to be married; 1 Keen, 685; 9 Sim. 615; 1 De G. J. & S. 177; 11 W. R. 614; but not if the reputed relation is the motive for the bequest; 4 Ves. 802; 4 Brown, 90; 5 My. & C. 145; L. R. 2 Ex. 319. But see 1 Keen, 685.

Nephew and *nieces* are terms which, in the description of a legatee, will receive their strict import, unless there is something in the will to indicate a contrary intention; 14 Sim. 214; 1 Jac. 207; 4 My. & C. 60; 27 Beav. 480; 2 Yeates, 196; 3 Barb. 475; 3 Halst. Ch. 462; 10 Hare, 63; 7 De G. M. & G. 494; L. R. 6 Ch. App. 351; 2 Jones, Eq. 302.

The term *cousins* will be restricted in its signification, where there is something in the will to limit its meaning; 9 Sim. 457. See 2 Brown, C. C. 125; 1 Sim. & S. 301; 6

De Gex, M. & G. 68; 4 Mylne & C. 56; 9 Sim. 386; 31 Beav. 305.

Terms which give an estate tail in lands will be construed to give the absolute title to personalty; 1 Madd. 475; 19 Ves. 544; 8 H. L. Cas. 571; 3 Md. Ch. 36; 10 Yerger, 287; 23 Penn. 9; 3 W. & S. 124; 4 Dev. & B. 478; 2 Russ. & Mylne, 390; 1 Bligh, 1; L. R. 5 Eq. Cas. 383.

A legacy to one and his heirs, although generally conveying a fee-simple in real estate and the entire property in personalty, may, by the manner of its expression and connection, be held to be a designation of such persons as are the legal heirs of the person named, and thus they take as purchasers by name; 4 Bro. C. C. 542; 10 B. Mon. 104; 108 Mass. 579; 64 Me. 490; 15 N. J. 404; 15 Ohio, 559. But the authority of these cases is doubtful. The word "*heirs*," when used to denote succession or substitution, is understood in the case of a legacy to mean persons entitled under the intestate law; 63 Me. 368; 59 N. Y. 151; 14 Allen, 205; 9 Pet. 483; L. R. 9 Eq. 258; 100 Mass. 348; 3 Penn. 305. But if not so used, the word heir is construed in its ordinary and legal sense; 63 Me. 379; 59 N. Y. 149; 37 Penn. 9; 108 Mass. 579; 45 Penn. 201; 3 H. L. Cas. 557; L. R. 7 Eq. Cas. 151.

The word "*issue*," used as a word of purchase, comprises all descendants of him to whose issue the bequest is made; 3 Ves 257; 23 Beav. 40; 7 Allen, 76; 63 Penn. 484; 103 Mass. 288.

The term "*relations*" includes those only who would otherwise be entitled under the statute of distributions; 1 Bro. C. C. 31; 3 Swanst. 319; 54 Me. 291; 20 N. H. 431; 8 S. & R. 45; and so of the word "*family*;" 9 Ves. 323; 19 Beav. 580; L. R. 9 Eq. Cas. 622; 9 R. I. 412.

A legacy to A and his *executors and administrators*, *legal representatives* or *personal representatives*, gives A an absolute interest in the legacy; 15 Ves. 537; 1 Coll. 108; 118 Mass. 198; 18 Gratt. 529; L. R. 4 Eq. 359. But in some instances these words will be taken as words not of limitation but of purchase; 6 Sim. 47; L. R. 4 Eq. 359; 2 Beav. 67; 25 Md. 401. Generally when persons take under this description they will be bound to apply the legacy as the personal estate of the testator or intestate; 3 Bro. C. C. 224; 2 Yeates, 587; 8 Sim. 328. But see 1 Anstr. 128.

Mistakes in the name or description of legatees may be corrected whenever it can be clearly shown by the will itself what was intended; 1 Phill. 279, 288; 2 Younge & C. 72; 10 Hare, 345; 8 Md. 496; 15 N. H. 317; 32 *id.* 268; 4 Johns. Ch. 607; 23 Vt. 336; 7 Ired. Eq. 201; 15 Gray, 347; 59 N. Y. 441; L. R. 10 Eq. 29.

The only instances in which parol evidence is admissible to show the intention of the testator as to a legatee imperfectly described, is that of a strict equivocation: that is, where it appears from extraneous evidence that two or more persons answer the description in the will; 8 Bingh. 244; 5 M. & W. 363; 2 Younge & C. 72; 12 Ad. & E. 451; L. R. 2 P. & D. 8; L. R. 11 Eq. Cas. 578; 15 N. H. 330; 49 Me. 288; 3 Watts, 385; 24 Penn. 199; 59 N. Y. 441; and to explain names in the will, which the testator has used and which are peculiar or incomprehensible owing to testator's idiosyncrasies or other reasons; 2 P. Wms. 141; 4 John. Ch. 607; 5 H. L. Cas. 168.

Interest of legatee. Property given specifically to one for life, and remainder over, must be enjoyed specifically during the life of the first donee, although that may exhaust it; 4 My. & Cr. 299; 2 My. & K. 703; L. R. 11 Eq. 80; 45 N. H. 261; 6 Gill. & J. 171; 17 S. & R. 293; 2 Md. Ch. 190. But where the bequest is not specific, as where personal property is limited to one for life, remainder over, it is presumed that the testator intended the same property to go over, and if any portion of it be perishable, it shall be sold and converted into permanent property, for the benefit of all concerned; 2 My. & K. 699, 701, 702; 7 Ves. 137; 4 My. & C. 298; L. R. 4 Eq. Cas. 295.

In personal property there cannot be a remainder in the strict sense of the word, and therefore every future bequest of personal property, whether it be preceded or not by any particular bequest, or limited on a certain or uncertain event, is properly an executory bequest, and falls under the rules by which that mode of limitation is regulated; Fearne, Cont. Rem. 401, n. An executory bequest cannot be prevented or destroyed by any alteration whatsoever in the estate, out of which or after which it is limited; 8 Co. 96 *a*; 10 *id.* 476. And this privilege of executory bequests, which exempts them from being barred or destroyed, is the foundation of an invariable rule, that the event on which a limitation of this sort is permitted to take effect must be such that the estate will necessarily vest in interest from the time of its creation within a life or lives in being, and twenty-one years thereafter and the fraction of another year, allowing for the period of gestation, afterwards; Fearne, Cont. Rem. 431.

Lapse of legacies. Unless the legatee survive the testator, as a rule neither he nor his representatives have any claim to the legacy; 2 W. & S. 450; 18 Pick. 41; 4 Strobh. Eq. 179; and the same rule applies where a legacy is given to a man and his executors, etc.; 1 P. Wms. 83; 3 Bro. C. C. 128; 108 Mass. 382; 39 Conn. 219. Though the testator may expressly provide otherwise; 1 Bro. C. C. 84; L. R. 14 Eq. 343. Where the legacy is payable at a future time a question often arises as to when the legacy vests. The rule seems to be that if a legacy is *payable* or *to be paid* at a future time, then a vested interest is conferred on the legatee *eo instante* the testator dies, transmissible to his executors or administrators; 31 Beav. 425;

44 N. H. 281; 1 Ves. 217; 2 Sim. & S. 505; 5 W. & S. 517; 48 Me. 257; 9 Cush. 516; 2 Edw. Ch. 156. But if it be payable *at*, *if*, *when*, *in case*, or *provided* a certain time comes or contingency arrives, then the legatee's right depends upon his being alive at the time fixed for payment; 21 Pick. 311; 62 Me. 449; 37 Penn. 105; 3 R. I. 226; 106 Mass. 28; 4 Dana, 572; 3 Bro. C. C. 473; 5 Beav. 391. For exceptions to this rule see 2 Will. Exec. (6 Am. ed.) 1224, etc.

No particular form of words is requisite to constitute one a residuary legatee. It must appear to be the intention of the testator that he shall take the residue of the estate, after paying debts and meeting all other appointments of the will; 2 Jac. & W. 399; 44 N. H. 255; 9 Leigh, 361; 40 Conn. 264. The right of the executor to the residue of the estate when there is no residuary legatee is well established, both at law and in equity, in England, except so far as it is controlled by statute; 2 P. Wms. 340; 3 Atk. 228; 7 Ves. 288; but the rule has been controlled in equity by aid of slight presumptions in favor of the next of kin; 1 Bro. C. C. 201; 14 Sim. 8, 12; 2 Sm. & G. 241; 14 Ves. 197; and is now altered by stat. 11 Geo. IV. and 1 Wm. IV c. 40. The rule never obtained in this country, it is believed, to any great extent; 3 Binn. 557; 9 S. & R. 424; 6 Mass. 153; 2 Hayw. 298; 4 Leigh, 163; 9 S. & R. 186; 1 Penning. 44.

The assent of the executor to a legacy is requisite to vest the title in the legatee; 1 Bail. 504; 12 Ala. 532; 10 Humphr. 559; 2 Md. Ch. Dec. 162; 11 Gratt. 724; 8 How. 170; 2 Dev. & B. 254. This will often be presumed where the legatee was in possession of the thing at the decease of the testator, and the executor acquiesces in his right. See 6 Pick. 126; 6 Call, 55; 23 Ala. 326; 4 Dev. & B. 40; 1 Bailey, Ch. 517.

Abatement. The general pecuniary legacies are subject to abatement whenever the assets are insufficient to answer the debts and specific legacies. The abatement must be upon all *pro rata;* 4 Brown, Ch. 349, 350; 13 Sim. 440; 106 Mass. 100; 71 Penn. 333; but a residuary legatee has no right to call upon general legatees to abate proportionally with him; 1 Dr. & S. 623; L. R. 3 Ch. App. 537; 1 Story, Eq. Jur. §§ 555–575. And, generally, among general legatees there is a preference of those who have relinquished any right in consideration of their legacy over mere volunteers; 106 Mass. 100; L. R. 3 Ch. Div. 714. Specific legatees must abate, *pro rata*, when all the assets are exhausted except specific devises, and prove insufficient to pay debts; 2 Vern. 756; 1 P. Wms. 679; 2 Bla. Com. 513.

Demonstrative legacies will not abate under general legacies; 11 Ves. 607; 11 Cl. & F. 509; 25 N. Y. 128. In default of special provision the following order is observed in calling upon the estate to supply a deficiency of assets; (1) General residuary estate; (2) Estate devised for payment for debts; (3) Real estate descended; (4) Real estate devised subject to debts; (5) General legacies; (6) Specific legacies and devises *pro rata;* 11 Penn. 72.

Ademption of legacies. A specific legacy is revoked by the sale or change of form of the thing bequeathed: as, by converting a gold chain into a cup, or wool into cloth, or cloth into garments; 2 Bro. C. C. 110; 7 Johns. Ch. 262; so if a debt specifically bequeathed be received by the testator the legacy is adeemed; 3 Bro. C. C. 431; 7 Johns. Ch. 262; 23 N. H. 218; 10 Ohio, 64; and so of stock, which is partially or wholly disposed of by testator before his death; 6 Pick. 212; 28 Penn. 363; 1 Ves. Sen. 426; 7 Johns. Ch. 258. A demonstrative legacy is not adeemed by the sale or change of the fund; 15 Ves. 384; 6 H. L. Cas. 883; 11 Cl. & F. 509; 16 Penn. 275; 25 N. Y. 128; 13 Allen, 256. A legacy to a child is regarded in courts of equity as a portion for such child: hence, when the testator, after giving such a legacy, settles the child and gives a portion, it is regarded as an ademption of the legacy. And it will make no difference that the portion given in settlement is less than the legacy: it will still adeem the legacy *pro tanto;* 2 Vern. 257; 15 Beav. 565; 5 My. & C. 29; L. R. 14 Eq. 236; 16 N. Y. 9; 15 Penn. 212; 5 Rand. 577; 2 Story, Eq. Jur. §§ 1111–1113.

Payment of legacies. A legacy given generally, if no time of payment be named, is due at the death of the testator, although not payable until the executor has time to settle the estate in due course of law. See DEVISE. Legacies are not due by the civil law or the common law until one year after the decease of the testator, and from that time interest is chargeable on them. The same term is generally allowed the executor in the American states to dispose of the estate and pay debts, and sometimes, by special order of the probate court, this is extended, from time to time, according to circumstances; 13 Ves. 333; 12 N. Y. 474; 41 N. H. 391; 21 Md. 156; 105 Mass. 431; 4 Cl. & F. 276; 5 Binn. 475.

An annuity given by will shall commence at the death of the testator, and the first payment fall due one year thereafter; 3 Madd. 167; 1 Sumn. 19; 42 Barb. 533; 5 W. & S. 30. A distinction is taken between an annuity and a legacy, in the matter of interest. In the latter case, no interest begins to accumulate until the end of one year from the death of the testator; 1 Sch. & L. 301; 17 S. & R. 396; 2 Roper, Leg. 1253. In cases where a legacy is given a child as a portion, payable at a certain age, this will draw interest from the death of the testator; L. R. 1 Eq. 369; 11 Ves. 2; 5 Binn. 477, 479; 4 Rawle, 113, but this rule does not apply when any other provision is made for the child; 9 Beav. 164; 19 Penn. 49; 16 N. J. Eq. 243; 41 N. H. 393; 14 Allen, 239.

Where legatees are under disabilities, as infancy or coverture, the executor cannot discharge himself by payment, except to some party having a legal right to receive the same on the part of the legatee, which in the case of an infant is the legally-appointed guardian; 9 Metc. 435; 1 Johns. Ch. 3; 106 Mass. 586; 1 P. Wms. 285; and in the case of a married woman the husband; 1 Vern. 261; but in the latter case the executor may decline to pay the legacy until the husband make a suitable provision out of it for the wife, according to the order of the court of chancery; 8 Bligh, 224; Bisph. Eq. § 109. By statute in England and in some of the United States the executor is allowed in such cases to deposit the money on interest, subject to the order of the court of chancery; 2 Will. Exec. (6th Am. ed.) 1407. The executor is liable for interest upon legacies, whenever he has realized it, by investing the amount; L. R. 5 Ch. App. 233; 114 Mass. 404; 16 How. 542; and usually with annual rests; 29 Beav. 586; 23 N. J. Eq. 192; 109 Mass. 541. Where an executor was compelled to pay money out of his own funds on account of the *devastavit* of a co-executor, and the matter had lain along for many years on account of the infancy of the legatees, no interest was allowed under the special circumstances until the filing of the bill; 9 Vt. 41.

The better opinion is that at common law no action lay against an executor for a general legacy; 5 Term, 690. But in case of a specific legacy it will lie after the assent of the executor; 5 Gray, 67; 114 Mass. 26; and in the United States *assumpsit* will generally lie for all legacies even before assent by the executor; 30 N. H. 505; 6 N. J. Law, 432; 12 Penn. 341; 2 Johns. 243; 6 Conn. 176; 2 Hayw. 153; 63 Me. 537.

The proper remedy for the recovery of a legacy is in equity; 5 Term, 690; 35 N. H. 349; 71 N. C. 281; 35 N. H. 339; Will. Exec. (6th Am. ed.) 2005. In most of the United States summary proceedings to recover legacies are provided in the orphans' or probate courts.

Satisfaction of debt by legacy. In courts of equity, if a legacy equal or exceed the debt, it is presumed to have been intended to go in satisfaction; but if the legacy be less than the debt, it shall not be deemed satisfaction *pro tanto;* 16 Vt. 150; 12 Mass. 391; 3 S. & R. 54; 3 W. C. C. 43; 8 Cow. 246; 1 Lowell, 418. But courts allow very slight circumstances to rebut this presumption of payment: as, where the debt was not contracted until after the making of the will; 2 P. Wms. 343; Prec. in Chan. 240; 3 P. Wms. 353; 4 Madd. 325; 2 Salk. 508; where the debt is unliquidated, and the amount due not known; 1 P. Wms. 299; where the debt was due upon a bill or note negotiable; 3 Ves. 561; 1 Root, 159; 1 Allen, 129; where the legacy is made payable after the debt falls due; 3 Atk. 96; where the legacy appears from the will to have been given *diverso intuitu;* 2 Ves. Sen. Ch. 635; 2 Gill & J. 185; where there is express direction in the will for the payment of all debts and legacies, or the legacy is expressed to be for some other reason; 1 P. Wms. 410. The same rule applies where the legacy is of a different nature from the debt; 1 Atk. 428; 3 Atk. 65, 68; 2 Story, Eq. Jur. §§ 1110–1113; Brightly, Eq. Jur. §§ 382, 391; as a rule, the American cases are not favorable to the doctrine of satisfaction.

Release of debt by a legacy. If one leave a legacy to his debtor, it is not to be regarded as a release of the debt unless that appears to have been the intention of the testator; 4 Bro. C. C. 226; 15 Sim. Ch. 554; 5 Ala. 245; and parol evidence is admissible to prove this intention; 5 Ves. 341; 23 Beav. 404; 2 Dev. Ch. 488.

Where one appoints his debtor his executor, it is at law regarded as a release of the debt; Co. Litt. 264; 8 Co. 136 *a*; but this is now controlled by statute in England and in many of the United States; 116 Mass. 552; 15 Penn. 533; 9 Conn. 470; 7 Cow. 781. But in equity it is considered that the executor is still liable to account for the amount of his own debt; 11 Ves. Ch. 90, nn. 1, 2, 3; 13 *id.* 262, 264.

Where one appoints his creditor executor, and he has assets, it operates to discharge the debt, but not otherwise; 2 Will. Exec. (6th Am. ed.) 1316, etc.; 2 Show. 401; 1 Salk. 304. See, generally, Toller, Williams, on Executors, Roper on Legacies, Jarman on Wills.

LEGAL. That which is according to law. It is used in opposition to equitable: as, the legal estate is in the trustee, the equitable estate in the *cestui que trust.* But see Powell, Mortg. Index.

LEGAL ASSETS. Such property of a testator in the hands of his executor as is liable to debts in temporal courts and to legacies in the spiritual by course of law; equitable assets are such as are liable only by help of a court of equity. 2 Will. Exec. 1408–1431, Amer. notes. No such distinction exists in Pennsylvania; 1 Ashm. 347. See Story, Eq. Jur. § 551; 2 Jarm. Wills, 543.

LEGAL ESTATE. One the right to which may be enforced in a court of law.

It is distinguished from an equitable estate, the right to which can be established only in a court of equity. 2 Bouvier, Inst. n. 1688.

The party who has the legal title has alone the right to seek a remedy for a wrong to his estate, in a court of law, though he may have no beneficial interest in it. The equitable owner is he who has not the legal estate, but is entitled to the beneficial interest.

The person who holds the legal estate for the benefit of another is called a trustee; he who has the beneficiary interest and does not hold the legal title is called the beneficiary, or, more technically, the *cestui que trust.*

When the trustee has a claim, he must enforce his right in a court of equity, for he cannot sue any one at law in his own name; 1 East, 497; 8

Term, 322; 1 Saund. 158, n. 1; 2 Bingh. 20; still less can he in such court sue his own trustee; 1 East, 497.

LEGALIZATION. The act of making lawful.

By legalization is also understood the act by which a judge or competent officer authenticates a record, or other matter, in order that the same may be lawfully read in evidence.

LEGAL TENDER. That currency which has been made suitable by law for the purposes of a tender in the payment of debts.

The following descriptions of currency are legal tender in the United States:—

All the gold coins of the United States are a legal tender in all payments at their nominal value when not below the standard weight and limit of tolerance provided by law for the single piece, and, when reduced in weight below such standard tolerance, they are a legal tender at valuation in proportion to their actual weight. The *silver dollar* of 412½ grains is a legal tender for all debts and dues, public and private, except where otherwise expressly stipulated in the contract. The *silver coins* of the United States of smaller denominations than one dollar are a legal tender in all sums not exceeding ten dollars in payment of all dues, public and private. The trade dollar of 420 grains is not a legal tender. The five-cent piece, the three-cent piece, and the one-cent piece are legal tender for any amount not exceeding twenty-five cents in any one payment. No foreign coins are now a legal tender.

By acts of Feb. 25, 1862, July 11, 1862, and March 3, 1863, congress authorized the issue of notes of the United States, declaring them a legal tender for all debts, public and private, except duties on imports and interest on the public debt. 12 Stat. at L. 345, 532, 709. These notes are obligations of the United States, and are exempt from state taxation; 7 Wall. 26; but where a state requires its taxes to be paid in coin, they cannot be discharged by a tender of these notes. A debt created prior to the passage of the legal tender acts, and payable by the express terms of the contract in gold and silver coins, cannot be satisfied by a tender of treasury notes; 7 Wall. 229; *id.* 258; 12 *id.* 687. The legal tender acts are constitutional, as applied to pre-existing contracts, as well as to those made subsequent to their passage; 12 Wall 457; *per* Strong, J., overruling the previous opinion of the court in 8 Wall. 604, *per* Chase, C. J. See 17 Am. L. Reg. 193; 19 *id.* 73; 21 *id.* 601.

A postage currency has also been authorized, which is receivable in payment of all dues to the United States less than five dollars. They are not, however, a legal tender in payment of private debts. (Act of Congress, approved July 17, 1862.)

LEGALIS HOMO (Lat.). A person who stands *rectus in curia*, who possesses all his civil rights. A lawful man. One who stands *rectus in curia*, not outlawed nor infamous. In this sense are the words *probi et legales homines*.

LEGANTINE CONSTITUTIONS. The name of a code of ecclesiastical laws, enacted in national synods, held under legates from Pope Gregory IX. and Clement IV., in the reign of Hen. III., about the years 1220 and 1268. 1 Bla. Com. 83. Burn says, 1237 and 1268. 2 Burn, Eccl. Law, 30 *d.*

LEGATARY. One to whom anything is bequeathed; a legatee. This word is sometimes, though seldom, used to designate a legate or nuncio.

LEGATEE. The person to whom a legacy is given. See LEGACY.

LEGATES. Legates are extraordinary ambassadors sent by the pope to catholic countries to represent him and to exercise his jurisdiction. They are distinguished from the ambassadors of the pope who are sent to other powers.

Legates à latere hold the first rank among those who are honored by a legation; they are always chosen from the college of cardinals, and are called *à latere*, in imitation of the magistrates of ancient Rome, who were taken from the court or *side* of the emperor.

Legati missi are simple envoys.

Legati nati are those who are entitled to be legates by birth. See A LATERE.

LEGATION. An embassy; a mission. All persons attached to a foreign legation, lawfully acknowledged by the government of this country, whether they are ambassadors, envoys, ministers, or attachés, are protected by the act of April 30, 1790, 1 Story, Laws, 83, from violence, arrest, or molestation; 1 Dall. 117; 1 Wash. C. C. 232; 2 *id.* 435; 4 *id.* 531; 11 Wheat. 467; 1 Miles, 366; 1 N. & M'C. 217; 1 Baldw. 240; Wheat. Int. Law, 167. See AMBASSADOR; ARREST; PRIVILEGE.

LEGATORY. The third part of a freeman's personal estate, which by the custom of London, in case he had a wife and children, the freeman might always have disposed of by will. Bacon, Abr. *Customs of London* (D 4).

LEGES (Lat.). **In Civil Law.** Laws proposed by a magistrate of the senate and adopted by the whole people in *comitia centuriata*. See POPULISCITUM; LEX.

In English Law. Laws. *Scriptæ.*

Leges scriptæ, written or statute laws.

Leges non scriptæ, unwritten or customary laws; the common law, including general customs, or the common law properly so called; and also particular customs of certain parts of the kingdom, and those particular laws that are, by custom, observed only in certain courts and jurisdictions. 1 Bla. Com. 67. "These parts of law are therefore styled *leges non scriptæ*, because their original institution and authority are not set down in writing, as acts of parliament are, but they

receive their binding power and the force of laws by long and immemorial usage." 1 Steph. Com. 40, 66. It is not to be understood, however, that they are merely oral; for they have come down to us in reports and treatises.

LEGISLATIVE POWER. The authority, under the constitution, to make laws, and to alter and repeal them.

LEGISLATOR. One who makes laws.

LEGISLATURE. That body of men in the state which has the power of making laws.

By the constitution of the United States, art. 1, § 1, all legislative powers granted by it are vested in a congress of the United States, which shall consist of a senate and house of representatives.

It requires the consent of a majority of each branch of the legislature in order to enact a law, and then it must be approved by the president of the United States, or, in case of his refusal, by two-thirds of each house; U. S. Const. art. 1, § 7, 2.

Most of the constitutions of the several states contain provisions nearly similar to this. In general, the legislature will not, and, by the constitutions of some of the states, cannot, exercise judicial functions: yet the use of such power upon particular occasions is not without example.

LEGITIM (called, otherwise, Bairn's Part of Gear). **In Scotch Law.** The legal share of father's free movable property, due on his death to his children: if widow and children are left, it is one-third; if children alone, one-half; Ersk. Inst. 3. 9. 20; 4 Bell, H. L. Cas. 286.

LEGITIMACY. The state of being born in wedlock; that is, in a lawful manner.

Marriage is considered by all civilized nations as the only source of legitimacy; the qualities of husband and wife must be possessed by the parents in order to make the offspring legitimate; and, furthermore, the marriage must be lawful, for if it is void *ab initio*, the children who may be the offspring of such marriage are not legitimate; 1 Phill. Ev.; La. Civ. Code, art. 203 to 216.

In Virginia, it is provided, by statute of 1787, "that the issue of marriages deemed null in law shall nevertheless be legitimate." 3 Hen. & M. 228, n.

A strong presumption of legitimacy arises from marriage and cohabitation; and proof of the mother's irregularities will not destroy this presumption: *pater est quem nuptiæ demonstrant.* To rebut this presumption, circumstances must be shown which render it impossible that the husband should be the father, as impotency and the like; 3 Bouvier, Inst. n. 3062. See BASTARD.

LEGITIMATE. That which is according to law: as, legitimate children are lawful children, born in wedlock, in contradistinction to bastards; legitimate authority, or lawful power, in opposition to usurpation.

LEGITIMATION. The act of giving the character of legitimate children to those who were not so born.

In Louisiana, the Civil Code, art. 217, enacts that "children born out of marriage, except those who are born of an incestuous or adulterous connection, may be legitimated by the subsequent marriage of their father and mother, whenever the latter have legally acknowledged them for their children, either before their marriage, or by the contract of marriage itself."

In most of the other states, the character of legitimate children is given to those who are not so, by special acts of assembly. In Georgia, real estate may descend from a mother to her illegitimate children and their representatives, and from such child, for want of descendants, to brothers and sisters, born of the same mother, and their representatives. Prince's Dig. 202. In Alabama, Kentucky, Mississippi, Pennsylvania, Vermont, and Virginia, subsequent marriage of parents, and recognition by the father, legitimize an illegitimate child; and the law is the same in Massachusetts, for all purposes except inheriting from their kindred. Mass. Rev. Stat. 414.

The subsequent marriage of parents legitimatizes the child in Illinois; but he must be afterwards acknowledged. The same rule seems to have been adopted in Indiana and Missouri. An acknowledgment of illegitimate children, of itself, legitimatizes in Ohio; and in Michigan and Mississippi, marriage alone between the reputed parents has the same effect. In Maine, a bastard inherits from one who is legally adjudged, or in writing owns himself to be, the father. A bastard may be legitimated in North Carolina, on application of the putative father to court, either where he has married the mother, or she is dead, or married another, or lives out of the state. In a number of the states, namely, in Alabama, Connecticut, Illinois, Indiana, Kentucky, Maine, Massachusetts, Michigan, North Carolina, Ohio, Rhode Island, Tennessee, Vermont, and Virginia, a bastard takes by descent from his mother, with modifications regulated by the laws of these states. 2 Hill, Abr. §§ 24–35, and authorities cited. See DESCENT.

LEGITIME. In Civil Law. That portion of a parent's estate of which he cannot disinherit his children without a legal cause.

The civil code of Louisiana declares that donations *inter vivos* or *mortis causâ* cannot exceed two-thirds of the property of the disposer, if he leaves at his decease a legitimate child; one-half if he leaves two children; and one-third if he leaves three or a greater number. Under the name of children are included descendants of whatever degree they may be: it must be understood that they are only counted for the child they represent. La. Civ. Code, art. 1480.

In Holland, Germany, and Spain, the principles of the Falcidian law, more or less limited, have been generally adopted. Coop. Just. 516.

In the United States, other than Louisiana, and in England, there is no restriction on the

right of bequeathing. But this power of bequeathing did not originally extend to *all* a man's personal estate: on the contrary, by the common law, as it stood in the reign of Henry II., a man's goods were to be divided into three equal parts, one of which went to his heirs or lineal descendants, another to his wife, and the third was at his own disposal; or, if he died without a wife, he might then dispose of one moiety, and the other went to his children; and so *e converso* if he had no children, the wife was entitled to one moiety, and he might bequeath the other; but if he died without either wife or issue, the whole was at his own disposal. Glanville, l. 2, c. 5; Bracton, l. 2, c. 26. The shares of the wife and children were called their reasonable part. 2 Bla. Com. 491. See DEATH'S PART; FALCIDIAN LAW.

LENDER. He from whom a thing is borrowed. The bailor of an article loaned. See BAILMENT; LOAN.

LESION. In Civil Law. A term used to signify the injury suffered, in consequence of inequality of situation, by one who does not receive a full equivalent for what he gives in a commutative contract.

The remedy given for this injury is founded on its being the effect of implied error or imposition; for in every commutative contract equivalents are supposed to be given and received. La. Code, art. 1854. Persons of full age, however, are not allowed in point of law to object to their agreements as being injurious, unless the injury be excessive. Pothier, Obl. p. 1, c. 1, s. 1, art. 3, § 4. But minors are admitted to restitution, not only against any excessive inequality, but against any inequality whatever. Pothier, Obl. p. 1, c. 1, s. 1, art. 3, § 5; La. Code, art. 1858. See FRAUD; GUARDIAN; SALE.

LESSEE. He to whom a lease is made. He who holds an estate by virtue of a lease. See LEASE.

LESSOR. He who grants a lease. See LEASE; LANDLORD AND TENANT.

LESTAGE, LASTAGE (Sax. *last*, burden). A custom for carrying things in fairs and markets. Fleta, l. 1, c. 47; Termes de la Ley.

LET. Hindrance; obstacle; obstruction. To lease; to grant the use and possession of a thing for compensation. It is the correlative of hire. See HIRE. To award a contract of some work to a proposer, after proposals have been received; 35 Ala. 33.

LETTER. He who, being the owner of a thing, lets it out to another for hire or compensation. Story, Bailm. § 369. See HIRING.

LETTER. An epistle; a dispatch; a written message, usually on paper, folded up and sealed, and sent by one person to another. 1 Caines, 582.

The business of transporting and delivering letters between different towns, states, and countries, and from one part of a city to another, is undertaken by the government, and private persons are forbidden to enter into competition.

In the United States by act of congress, severe penalties are inflicted upon all persons who interfere with the rapid transportation of the mails, and upon all officers who tamper with the mails, as by opening letters, secreting the contents, etc., and competition by private individuals is prohibited; R. S. 3982.

Severe penalties are also provided for the punishment of all persons sending obscene, scurrilous, or disloyal books, pamphlets, or articles through the mails. Letters and circulars regarding illegal lotteries are also forbidden; R. S. 3893.

It is no defence to an indictment under this statute, that the matter mailed was sent to a detective who wrote a decoy letter soliciting it under a fictitious name; 11 Blatchf. 346; 10 Fed. Rep. 92, note.

Contracts may be made by letter; and when a proposal is made by letter, the mailing a letter containing an acceptance of the proposal completes the contract; 6 Wend. 104; 1 B. & Ald. 681; 6 Hare, 1; 1 H. L. Cas. 381; 11 N. Y. 441; 4 Ga. 1; 12 Conn. 431; 7 Dana, 281; 5 Penn. 339; 9 How. 390; 4 Wheat. 228; L. R. 4 Eq. 9; L. R. 7 Ch. App. 587. See 23 Am. Law Reg. 401; 29 *id.* 21; 2 Kent, *477, n.; Holmes, Com. Law, 305. This doctrine has sometimes been questioned, and it has been held that the letter of acceptance must be received by the offerer before the contract becomes complete; 1 Pick. 281; L. R. 6 Ex. 108 (but see 7 Ch. App. 592). See Merlin, Rép. Jur. tit. *Vente*, 1, art. iii.; Langd. Contr. 15; 7 Am. L. Rev. 433; L. R. 13 Eq. 148.

Payments may be made by letter at the risk of the creditor, when the debtor is authorized, expressly, or impliedly from the usual course of business, and not otherwise; Peake, 67; 1 Ex. 477; Ry. & M. 149; 3 Mass. 249.

LETTER OF ADVICE. In Common Law. A letter containing information of any circumstances unknown to the person to whom it is written; generally informing him of some act done by the writer of the letter.

It is usual and perfectly proper for the drawer of a bill of exchange to write a letter of advice to the drawee, as well to prevent fraud or alteration of the bill, as to let the drawee know what provision has been made for the payment of the bill. Chitty, Bills, 185.

LETTER OF ADVOCATION. In Scotch Law. The decree or warrant of the supreme court or court of sessions, discharging the inferior tribunal from all further proceedings in the matter and advocating the action to itself. This proceeding is similar to a *certiorari* issuing out of a superior court for the removal of a cause from an inferior.

LETTER OF ATTORNEY. In Practice. A written instrument, by which one or more persons, called the constituents, authorize one or more other persons, called the attorneys, to do some lawful act by the latter for or instead, and in the place, of the former;

1 Moody, 52, 70. It may be parol or under seal. It is equivalent to POWER OF ATTORNEY, *q. v.*

LETTER BOOK. In Common Law. A book containing the copies of letters written by a merchant or trader to his correspondents.

A press copy in a letter book stands in the same relation to the original as a copy taken from the letter book; both are secondary evidence, and are receivable on the loss of, or after notice to produce, the original: but the decisions are not entirely uniform on this point; 3 Camp. 305; 37 Conn. 555; 102 Mass. 362; see Bouv. Inst. n. 3143; 1 Stark. Ev. 356; 1 Whart. Ev. §§ 72, 93, 133; 1 Greenl. Ev. § 116. See COPY; EVIDENCE; PRESS COPY.

LETTER CARRIER. A person employed to carry letters from the post-office to the persons to whom they are addressed. Provisions are made by the act of March 3, 1851, 11 U. S. Stat. at Large, 591, for the appointment of letter carriers in cities and towns, and by c. 21, § 2 of the same act, for letter carriers in Oregon and California.

See acts of June 23, 1874, and Feb. 21, 1879, R. S. 3865, 3874, 3980, 3996, and R. S. Suppl. pp. 95, 414, 415.

LETTER OF CREDENCE. In International Law. A written instrument addressed by the sovereign or chief magistrate of a state to the sovereign or state to whom a public minister is sent, certifying his appointment as such, and the general object of his mission, and requesting that full faith and credit may be given to what he shall do and say on the part of his court.

When it is given to an ambassador, envoy, or minister accredited to a sovereign, it is addressed to the sovereign or state to whom the minister is delegated; in the case of a *chargé d'affaires*, it is addressed by the secretary or minister of state charged with the department of foreign affairs to the minister of foreign affairs of the other government; Wheat. Int. Law, pt. 3, c. 1, § 7; Wicquefort, de l'Ambassadeur, l. 1, § 15.

LETTER OF CREDIT. An open or sealed letter, from a merchant in one place, directed to another, in another place or country, requiring him, if a person therein named, or the bearer of the letter, shall have occasion to buy commodities, or to want money to any particular or unlimited amount, either to procure the same, or to pass his promise, bill, or other engagement for it, the writer of the letter undertaking to provide him the money for the goods, or to repay him by exchange, or to give him such satisfaction as he shall require, either for himself or the bearer of the letter; 3 Chitty, Com. Law, 336. And see 4 *id.* 259, for a form of such letter.

These letters are either general or special: the former is directed to the writer's friends or correspondents generally, where the bearer of the letter may happen to go; the latter is directed to some particular person. When the letter is presented to the person to whom it is addressed, he either agrees to comply with the request, in which case he immediately becomes bound to fulfil all the engagements therein mentioned; or he refuses, in which case the bearer should return it to the giver without any other proceeding, unless, indeed, the merchant to whom the letter is directed is a debtor of the merchant who gave the letter, in which case he should procure the letter to be protested; 3 Chitty, Com. Law, 337; Malyn, 76; 1 Beaw. Lex Mer. 607; Hall, Adm. Pr. 14; 4 Ohio, 197.

In England it seems questionable whether an action can be maintained by one who advances money on a general letter of credit; 2 Story, 214; 11 M. & W. 383; the reason given being that there is no privity of contract between the mandant and the mandatory. But in this country the contrary doctrine is well settled; 3 N. Y. 214; 5 Hill, N. Y. 643; 58 Penn. 102; 54 Miss. 1; s. c. 28 Am. Rep. 347, n. In England, a letter of credit is not negotiable; 1 Macq. 513; Grant, Bank. ch. 15; except when it relates to bills of exchange; L. R. 2 Ch. App. 397; 3 *id.* 154. The same rule has been generally followed here, but it has been held that a general letter of credit, if it authorize more than a single transaction with the party to whom it is granted, may be honored by several persons successively, keeping within the specified aggregate; 3 N. Y. 203; 22 Vt. 160.

The debt which arises on such letter, in its simplest form, when complied with, is between the mandatory and the mandant; though it may be so conceived as to raise a debt also against the person who is supplied by the mandatory. *First*, when the letter is purchased with money by the person wishing for the foreign credit, or is granted in consequence of a check on his cash account, or procured on the credit of securities lodged with the person who granted it, or in payment of money due by him to the payee, the letter is, in its effects, similar to a bill of exchange drawn on the foreign merchant. The payment of the money by the person on whom the letter is granted raises a debt, or goes into account between him and the writer of the letter, but raises no debt to the person who pays on the letter, against him to whom the money is paid. *Second*, when not so purchased, but truly an accommodation, and meant to raise a debt on the person accommodated, the engagement generally is, to see paid any advances made to him, or to guaranty any draft accepted or bill discounted; and the compliance with the mandate, in such case, raises a debt both against the writer of the letter and against the person accredited; 1 Bell, Com. 371, 5th ed. The bearer of the letter of credit is not considered bound to receive the money; he may use the letter as he pleases, and he contracts an obligation only by receiving the money; Pothier, *Contr. de Change*, 237.

LETTER OF LICENSE. An instrument or writing made by creditors to their insolvent debtor, by which they bind themselves to allow him a longer time than he had a right to, for the payment of his debts, and that they will not arrest or molest him in his

person or property till after the expiration of such additional time. Since the general abolition of imprisonment for debt, and under the modern system of laws for settling insolvents' estates, it is seldom, if ever, used.

LETTER OF MARQUE AND REPRISAL. A commission granted by the government to a private individual, to take the property of a foreign state, or of the citizens or subjects of such state, as a reparation for an injury committed by such state, its citizens or subjects. The prizes so captured are divided between the owners of the *privateer*, the captain, and the crew. A vessel loaded with merchandise, on a voyage to a friendly port, but armed for its own defence in case of attack by an enemy, is also called a *letter of marque*. 1 Boulay-Paty, tit. 3, § 2, p. 300.

By the constitution, art. 1, § 8, cl. 11, congress have power to grant letters of marque and reprisal. And by another section of the same instrument this power is prohibited to the several states. The granting of letters of marque is not always a preliminary to war or necessarily designed to provoke it. It is a hostile measure for unredressed grievances, real or supposed; Story, Const. § 1356. This is a means short of actual war, well recognized in international law, for terminating differences between nations; Wheat. Int. Law, § 290. Special reprisals are when letters of marque are granted in time of peace, to particular individuals who have suffered an injury from the government or subjects of another nation; they are to be granted only in case of clear and open denial of justice; *id.* § 291. See Chitty, Law of Nat. 73; 1 Bla. Com. 251; Viner, Abr. *Prerogative* (B 4); Comyns, Dig. *Prerogative* (B 4); Molloy, b. 1, c. 2, § 10; 2 Woodd. 440; 2 C. Rob. 224; 5 *id.* 9, 260. And see REPRISAL; PRIVATEER; DECLARATION OF PARIS.

LETTER MISSIVE. In English Law. A letter from the king or queen to a dean and chapter, containing the name of the person whom he would have them elect as bishop. 1 Steph. Com. 666. A request addressed to a peer, peeress, or lord of parliament, against whom a bill has been filed, desiring the defendant to appear and answer to the bill. It is issued by the lord chancellor, on petition, after the filing of the bill; and a neglect to attend to this places the defendant, in relation to such suit, on the same ground as other defendants who are not peers, and a subpœna may then issue; 2 Madd. Ch. Pr. 196; Coop. Eq. Pl. 16; 1 Dan. Ch. Pr. 366–369.

LETTER OF RECALL. A written document addressed by the executive of one government to the executive of another, informing the latter that a minister sent by the former to him has been recalled.

LETTER OF RECOMMENDATION. In Commercial Law. An instrument given by one person to another, addressed to a third, in which the bearer is represented as worthy of credit. 1 Bell, Com. 5th ed. 371; 3 Term, 51; 7 Cra. 69; Fell, Guar. c. 8; 6 Johns. 181; 13 *id.* 224; 1 Day, Conn. 22. See RECOMMENDATION.

LETTER OF RECREDENTIALS. A document delivered to a minister by the secretary of state of the government to which he was accredited. It is addressed to the executive of the minister's country. This is in reply to the *letter of recall*.

LETTERS OF ABSOLUTION. Letters whereby, in former times, an abbot released a monk *ab omni subjectione et obedientia*, etc., and enabled him to enter some other religious order. Jacob.

LETTERS OF ADMINISTRATION. An instrument in writing, granted by the judge or officer having jurisdiction and power of granting such letters, thereby giving the administrator (naming him) "full power to administer the goods, chattels, rights, and credits, which were of the said deceased," in the county or district in which the said judge or officer has jurisdiction; as also to ask, collect, levy, recover, and receive the credits whatsoever of the said deceased, which at the time of his death were owing, or did in any way belong, to him, and to pay the debts in which the said deceased stood obliged, so far forth as the said goods and chattels, rights and credits, will extend, according to the rate and order of law." See LETTERS TESTAMENTARY.

LETTERS OF CORRESPONDENCE. In Scotch Law. Letters are admissible in evidence against the panel, *i. e.*, the prisoner at the bar, in criminal trials. A letter written by the panel is evidence against him; not so one from a third party found in his possession. Bell, Dict.

LETTERS OF FIRE AND SWORD. See FIRE AND SWORD.

LETTERS OF HORNING. See HORNING.

LETTERS OF SAFE CONDUCT. See SAFE CONDUCT.

LETTERS CLOSE. In English Law. Close letters are grants of the king, and, being of private concern, they are thus distinguished from letters patent. See CLOSE ROLLS.

LETTERS AD COLLIGENDUM BONA DEFUNCTI. In Practice. In default of the representatives and creditors to administer to the estate of an intestate, the officer entitled to grant letters of administration may grant, to such person as he approves, *letters to collect the goods of the deceased*, which neither make him executor nor administrator; his only business being to collect the goods and keep them in his safe-custody; 2 Bla. Com. 505.

LETTERS PATENT. The name of an instrument granted by the government to convey a right to the patentee: as, a patent for

a tract of land: or to secure to him a right which he already possesses, as a patent for a new invention or discovery. Letters patent are matter of record. They are so called because they are not sealed up, but are granted open. See PATENT.

LETTERS OF REQUEST. In English Ecclesiastical Law. An instrument by which a judge of an inferior court waives or remits his own jurisdiction in favor of a court of appeal immediately superior to it.

Letters of request, in general, lie only where an appeal would lie, and lie only to the next immediate court of appeal, waiving merely the primary jurisdiction to the proper appellate court, except letters of request from the most inferior ecclesiastical court, which may be direct to the court of arches, although one or two courts of appeal may by this be ousted of their jurisdiction as courts of appeal; 2 Add. Eccl. 406. The effect of letters of request is to give jurisdiction to the appellate court in the first instance. See a form of letters of request in 2 Chitty, Pr. 498, note *h*; 3 Steph. Com. 306. The same title was also given to letters formerly granted by the Lord Privy Seal preparatory to granting letters of marque.

LETTERS ROGATORY. An instrument sent in the name and by the authority of a judge or court to another, requesting the latter to cause to be examined, upon interrogatories filed in a cause depending before the former, a witness who is within the jurisdiction of the judge or court to whom such letters are addressed.

They are sometimes denominated *sub mutuæ vicissitudinis*, from a clause which they generally contain. Where the government of a foreign country, in which witnesses proposed to be examined reside, refuse to allow commissioners to administer oaths to such witnesses, or to allow the commission to be executed unless it is done by some magistrate or judicial officer there, according to the laws of that country, *letters rogatory* must issue. Commissioners are forbidden to administer oaths in the island of St. Croix; 6 Wend. 476; in Cuba; 1 Pet. C. C. 236; 8 Paige, Ch. 446; and in Sweden; 2 Ves. Sen. 236.

These letters are directed to any judge or tribunal having jurisdiction of civil causes in the foreign country, recite the pendency of the suit in court, and state that there are material witnesses residing there, without whose testimony justice cannot be done between the parties, and then *request* the said judge or tribunal to cause the witnesses to come before them and answer to the interrogatories annexed to the letters rogatory, to cause their depositions to be committed to writing and returned with the letters rogatory; 1 Greenl. Ev. § 320. In letters rogatory there is always an offer, on the part of the court whence they issued, to render a mutual service to the court to which they may be directed, whenever required. The practice of such letters is derived from the civil law, by which these letters are sometimes called letters requisitory. A special application must be made to court to obtain an order for letters rogatory.

Though formerly used in England in the courts of common law, 1 Rolle, Abr. 530, pl. 13, they have been superseded by commissions of *dedimus potestatem*, which are considered to be but a feeble substitute. Dunl. Adm. Pr. 223, n.; Hall, Adm. Pr. 37. The courts of admiralty use these letters; and they are recognized by the law of nations. See Fœlix, Droit Intern. liv. 2, t. 4, p. 300; Denisart; Dunlap, Adm. Pr. 221; Bened. Adm. § 533; 1 Hoffm. Ch. 482.

In Nelson *vs.* United States, *supra*, will be found a copy of letters rogatory, issued to the courts of Havana, according to the form and practice of the civil law, on an occasion when the authorities there had prevented the execution of a commission, regarding any attempts to take testimony under it as an interference with the rights of the judicial tribunals of that place.

Under letters rogatory from any foreign court to any circuit court of the United States, a commissioner designated to take the examination of witnesses in said letters mentioned, shall be empowered to compel the witnesses to appear and depose in the same manner as in court; Act of March 1, 1855, § 2. For further legislation, see Acts of March 3, 1863, c. 95; February 27, 1877, c. 69; Rev. Stat. 1878, §§ 875, 4071–4074; Weeks, Depos. §§ 128, 129, 130.

LETTERS TESTAMENTARY. An instrument in writing granted by the judge or officer having jurisdiction of the probate of wills, under his hand and official seal, making known that at a certain date the last will and testament of A B (naming the testator) was duly proved before him; that the probate and grant of administration was within his jurisdiction, and certifying accordingly "that the administration of all and singular the goods, chattels, and credits of the said deceased, and any way concerning his will, was granted" to C D, "the executor named in the said will," "he having been already sworn well and faithfully to administer the same, and to make a true and perfect inventory, etc., and to exhibit the same, etc., and also to render a just and true account thereof."

In England, the original will is deposited in the registry of the ordinary or metropolitan, and a copy thereof made out under his seal; which copy and the letters testamentary are usually styled the probate. This practice has been followed in some of the United States; but where the will needs to be proved in more than one state, the impounding of it leads to much inconvenience. In other states, the original will is returned to the executor, with a certificate that it has been duly proved and recorded, and the letters testamentary are a *separate* instrument. The letters are usually general; but may be limited as to the locality within which the executor is to act.

as to the subject-matter over which he is to have control, or otherwise, as the exigencies of the case or the express directions of the testator may require.

Letters testamentary are granted in case the decedent dies testate; letters of administration, in case he dies intestate, or fails to provide an executor; see ADMINISTRATION, EXECUTOR; but in regard to all matters coming properly under the heads of letters of administration or letters testamentary, there is little or no difference in the law relating to the two instruments. Letters testamentary and of administration are, according to their terms and extent, conclusive as to personal property while they remain unrevoked. They cannot be questioned in a court of law or of equity, and cannot be impeached, even by evidence of fraud or forgery. Proof that the testator was insane, or that the will was forged, is inadmissible; 1 Lev. 235; 8 Cush. 529; 12 Ves. 298; 21 Wall. 503; 27 Me. 17; 49 N. H. 295; 75 Penn. 503; 16 Mass. 433; 19 Johns. 386; 10 Ala. 977; 4 McC. 217; 18 Cal. 499; 60 N. Y. 123; 14 Ga. 185. But if the nature of his plea raise the issue, the defendant may show that the court granting the supposed letters had no jurisdiction and that its action is therefore a nullity; 3 Term, 130; or that the seal attached to the supposed probate has been forged, or that the letters have been revoked or that the testator is alive; 15 S. & R. 42; 9 Dana, 41; 8 Cra. 9; 3 Allen, 87; 25 Ala. 408.

Letters testamentary can be revoked only by the court whence they issued, or on appeal; Will. Exec. (6 Am. ed.) 571.

At common law the executor or administrator has no power over real estate; nor is the probate even admissible as evidence that the instrument is a will, or as an execution of a power to charge land; Will. Exec. (6 Am. ed.) 562. By statute, in some states, the probate is made *prima facie* or conclusive evidence as to realty; 17 Mass. 68; 23 Conn. 1; 10 Wheat. 470; 3 Penn. 498; 8 B. Monr. 340; 5 La. 388. In some states the probate is made after the lapse of a certain time conclusive as to realty; 9 Pet. 180; 75 Penn. 512; 8 Ohio, 246; 26 Ala. 524; 6 Gratt. 564; 8 Wright, 189. Though the probate court has exclusive jurisdiction of the grant of letters, yet where a legacy has been obtained by fraud, or the probate has been procured by fraud on the next of kin, a court of equity would hold the legatee or wrong-doer as bound by a trust for the party injured; Will. Exec. (6 Am. ed.) 552 *et seq.*

Letters may be revoked by the court which made the grant, or an appeal to a higher tribunal, reversing the decision by which they were granted. Special or limited administration will be revoked on the occasion ceasing which called for the grant. An executor or administrator will be removed when the letters were obtained improperly; Will. Exec. (6 Am. ed.) 571.

Of their effect in a state other than that in which legal proceedings were instituted.

In view of the rule of the civil law, that *personalia sequuntur personam*, certain effect has been given by the comity of nations to a foreign probate granted at the place of the domicil of the deceased, in respect to the personal assets in other states. At common law, the *lex loci rei sitæ* governs as to real estate, and the foreign probate has no validity; but as to personalty the law of the domicil governs both as to testacy and intestacy. It is customary, therefore, on a due exemplification of the probate granted at the place of domicil, to admit the will to probate, and issue letters testamentary, without requiring original or further proof.

A foreign probate at the place of domicil has in itself no force or effect beyond the jurisdiction in which it was granted, but on its production fresh probate will be granted thereon in all other jurisdictions where assets are found. This is the general rule, but is liable to be varied by statute, and is so varied in some of the states of the United States.

Alabama. Executors and administrators of any person not an inhabitant of Alabama may sue and recover, or receive, property by virtue of letters testamentary or of administration granted in another of the United States, provided that no such letters shall have been issued in Alabama. But before the rendition of the judgment or receipt of the property, they must record with the probate judge of the county said letters, duly authenticated according to the laws of the United States. Before they are entitled to the money on the judgment, they must also give bond, payable to the judge of the court where the judgment is rendered, for the faithful administration of the money received. A delivery of property or a judgment recovered as aforesaid, is a full protection to the defendant or person delivering such property; Walker's Rev. Code (1867), §§ 2293–2296.

Arkansas. Administrators and executors appointed in any of the United States may sue in the courts of this state in their representative capacity with as full effect as though they had received letters in this state; Rev. Stat. (1874), § 4473.

California. When the estate of the deceased is in more than one county, he having died out of the state, and not having been a resident thereof at the time of his death, the probate court of that county in which application is first made for letters testamentary or of administration shall have exclusive jurisdiction of the settlement of the estate; Wood, Cal. Dig. art. 2223.

Connecticut. Letters testamentary issued in another state are not available in this; 3 Day, 303; nor are letters of administration; 3 Day, 74; and see 2 Root, 462.

Dakota. The question has not been raised, and is not settled by statute.

Delaware. Letters testamentary or of administration granted in any other state and produced under the seal of the office or court granting the same are received as competent authority to the executor or administrator therein named. But if the deceased owed $20 or more to a citizen of the state, he must before recovering judgment in any suit instituted by him record his letters in the register's office and give security for the faithful application of the amount recovered. Proceedings in any suit may be stopped, or any

one may decline to pay over money or property in his hands until such recording and security are completed. But if judgment be once entered, it shall not be reversed or set aside for failure to comply with the above regulations; Rev. Code (1874), p. 552, §§ 46,.47, 48.

Florida. Executors and administrators who shall produce probate of wills or letters of administration duly obtained in any other state, and properly authenticated under the act of congress, may sue in the courts as other plaintiffs; Bush. Dig. 80, § 20; 9 Fla. 129.

Georgia. An executor or administrator may sue by virtue of letters taken out in any state where decedent was domiciled, upon filing an exemplification of said letters in the court where the action is brought. Any person interested as heir, legatee, creditor, or otherwise may compel him, however, to give security before removing the assets from the state. He may also sell decedent's real estate under the same rules as are prescribed for the sale of real estate by resident executors or administrators, and may transfer bank stocks, draw dividends thereon, and draw checks on decedent's funds, upon first depositing with the bank a certified copy of his appointment and qualification; Code (1873), §§ 2450; 2614–2618.

Idaho. No provision is made by statute, and no decisions on the point are reported.

Illinois. Executors or administrators who have obtained letters testamentary or of administration, may sue in the courts of this state, enforce claims of the deceased, and sell real estate to pay debts, provided that no letters have previously been granted in the state on the same estate, and provided that the plaintiff produces a copy of his letters duly authenticated according to the act of congress, and provided that he give a bond for costs; Rev. Stat. (1880), 107, §§ 42, 43. Deeds for real estate made by executors and administrators who have complied with the above regulations are valid; *id.* 272, § 34.

Indiana. An executor or administrator appointed in another state may maintain actions and suits, and do all other acts coming within his power, as such, within this state, upon producing an authenticated copy of such letters and filing them with the clerk of the court in which such suit is to be brought, and upon giving a bond for costs; 2 Rev. Stat. (1876) 548, § 159. In cases where he is to sell real estate, he must, in addition to the foregoing, file a copy of the bond given by him for the faithful application of the proceeds in the court of the foreign state. But if there be no such bond, or if the court shall think the surety therein insufficient, he shall first be required to file a sufficient bond; *id.* 530, §§ 95 & 96.

Iowa. If administration of the estate of a deceased non-resident has been granted in accordance with the laws of the state or country where he resided at the time of his death, the person to whom it has been committed may, upon his application, and upon qualifying himself in the same manner as is required of other executors, be appointed an executor to administer upon the property of the deceased in this state, unless another executor has previously been appointed in this state.

The original letters testamentary or of administration, or other authority, conferring his power upon such executor, or an attested copy thereof, together with a copy of the will, if there be one, attested as hereinbefore directed, must be filed in the office of the judge of the proper county court before such appointment can be made; Code (1873), 414, § 2368, 415, § 2369.

Kansas. An executor or administrator duly appointed in any other state or country may sue or be sued in any court in this state, in his representative capacity, in like manner as a non-resident; Comp. Laws (1879), 436, § 2490. In order to enable him to obtain an order for the sale of real estate, he must, however, file a duly authenticated copy of his letters and the bond given by him for the faithful performance of his duty in the probate court. If there be no such bond, or if the court shall think the surety insufficient, he must file a sufficient bond before obtaining the order; *id.* 427, §§ 2430 and 2431.

Kentucky. Executors or administrators appointed by another state may sue in the courts or prosecute claims otherwise on filing in court an authenticated copy of their letters and filing bond with security to pay from the assets so collected any debts due to residents in the state by decedent. Said bond must be filed before judgment is entered. Debtors paying over to a foreign executor or administrator who was qualified as aforesaid are protected; Gen. Stat. (1873), 453, §§ 43, 44, and 45.

Louisiana. Executors or administrators of other states must take out *letters of curatorship* in this state. Exemplifications of wills and testaments are evidence; 4 Griffith, Law Reg. 683; 8 Mart. La. N. S. 586. There is no statute provision.

Maine. Letters of administration must be taken from some court of probate in this state. Copies of wills which have been proved in a court of probate in any of the United States, or in a court of probate of any other state or kingdom, with a copy of the probate thereof, under the seal of the court where such wills have been proved, may be filed and recorded in any probate court in this state, which recording shall be of the same force as the recording and proving the original will; Rev. Stat. (1871), 507 and 508, §§ 12–15.

Maryland. Letters testamentary or of administration granted out of Maryland have no effect in this state, except only such letters issued in the District or Columbia; and letters granted there authorize executors or administrators to claim and sue in this state; Rev. Code (1878), 452, § 113. By the Rev. Code (1878), 452–453, §§ 114–117, when non-resident owners of any public or state of Maryland stocks, or stocks of the city of Baltimore, or any other corporation in this state, die, their executors or administrators constituted under the authority of the state, district, territory, or country where the deceased resided at his death, have the same power as to such stocks as if they were appointed by authority of the state of Maryland. But before they can transfer the stocks they must, during three months, give notice in two newspapers, published in Baltimore, of the death of the testator or intestate, and of the "amount and description of the stock designed to be transferred." Administration must be granted in this state, in order to recover a debt due here to a decedent, or any of his property, with the exception above noticed.

Massachusetts. When any person shall die intestate in any other state or country, leaving estate to be administered within this state, administration thereof shall be granted by the judge of probate of any county in which there is any estate to be administered; and the administration which shall be first lawfully granted shall extend to all the estate of the deceased within the state, and shall exclude the jurisdiction of the probate court in every other county; Rev. Stat. c. 117, § 2, 3. See 3 Mass. 514; 5 *id.* 67; 11 *id.* 256, 314; 1 Pick. 81.

Michigan. An executor or administrator hav-

ing received letters in another state upon filing a duly authenticated copy thereof in the probate court may be authorized to sell real estate of the deceased for the payment of debts and legacies upon either filing a copy of the bond duly authenticated given by him in the court whereby he was appointed, or if there be no such bond, or if the court shall deem the security inadequate, upon entering a bond with surety for the faithful application of the purchase money; Comp. Laws (1857), 919, §§ 3071–3075. For all other purposes it is necessary to take out letters in the state. Where the deceased leaves a will executed according to the laws of this state, and the same is admitted to proof and record where he dies, a certified transcript of the will and probate thereof may be proved and recorded in any county in this state where the deceased has property, real or personal, and letters testamentary may issue thereon; 2 Comp. Laws (1857), 867, § 2845.

Minnesota. Wills duly proved in any of the United States may be admitted to probate in any county where testator owned land or personalty with like effect as though originally there admitted to probate; Stat. at Large (1873), 648, § 18. Any executor or administrator appointed in another state may, upon filing a copy of his letters, duly authenticated, in the probate court, obtain leave to sell real estate for payment of debts or legacies, and may either by himself or by attorney execute deeds therefor with like force and effect as if letters had been granted to him in this state; *id.* 676, § 195.

Mississippi. Executors and administrators who have qualified in other states may sue in this state upon filing in the chancery court of the county wherein the suit is brought, a duly authenticated copy of said letters, and also a certificate from the court where the letters were granted that the property or debt sued for is included in the inventory filed in such court by such administrator or executor, and that he is there liable for the subject matter of such suit; Rev. Code (1871), 236, § 1189.

Missouri. Letters testamentary or of administration granted in another state have no validity in this; to maintain a suit, the executors or administrators must be appointed under the laws of this state; 1 Rev. Stat. (1879), art. vii.

Montana. The same provisions substantially as in Missouri are in force.

Nebraska. An executor or administrator duly appointed by any other state or county may sue as any other non-resident; Gen. Stat. 1873, 342, § 337; and, upon filing in the district court of any county a duly authenticated copy of his appointment, may be empowered to sell real estate. He must, however, in such case file a copy of the bond given by him in the foreign court, whereby his letters were granted; and if there be no such bond, or if the court shall judge the surety therein insufficient, must first give bond with surety for the faithful application by heirs of the purchase money; Gen. Stat. (1873), 294, 295, §§ 100–104.

New Hampshire. One who has obtained letters of administration; Adams, Rep. 193; or letters testamentary under the authority of another state, cannot maintain an action in New Hampshire by virtue of such letters; 3 Griffith, Law Reg. 41.

New Jersey. Executors having letters testamentary, and administrators letters of administration, granted in another state, cannot sue thereon in New Jersey, but must obtain such letters in that state as the law prescribes. When a will has been admitted to probate in any state or territory of the United States, or foreign nation, the surrogate of any county of this state is authorized, on application of the executor or any person interested, on filing a duly exemplified copy of the will, to appoint a time not less than thirty days and not more than six months distant, of which notice is to be given as he shall direct; and if, at such time, no sufficient reason be shown to the contrary, to admit such will to probate, and grant letters testamentary or of administration *cum testamento annexo*, which shall have the same effect as though the original will had been produced and proved under form. If the person to whom such letters testamentary or of administration be granted is not a resident of this state, he is required to give security for the faithful administration of the estate; Rev. Stat. (1877), 757, §§ 23, 24, and 25. If an exemplification of such foreign probate be filed in the probate court, it shall have like effect as regards real estate to a will duly admitted to probate within the state; *id.* § 26.

New York. An executor or administrator appointed in another state has no authority to sue in New York; 1 Johns. Ch. 153; 6 *id.* 353; 7 *id.* 45. Whenever an intestate, not being an inhabitant of this state, shall die out of the state, leaving assets in several counties, or assets shall after his death come in several counties, the surrogate of any county in which assets shall be shall have power to grant letters of administration on the estate of such intestate; but the surrogate who shall first grant letters of administration on such estate shall be deemed thereby to have acquired sole and exclusive jurisdiction over such estate, and shall be vested with the powers incidental thereto; 3 Fay's Dig. 820, § 24. When letters testamentary or of administration have been granted by a foreign state, and no such letters granted in this state, the executor or administrator so appointed shall on producing a duly certified copy of said letters be entitled to like letters in preference to all others except the public administrator in the city of New York; *id.* § 24.

North Carolina. It was decided by the court of conference, then the highest tribunal in North Carolina, that letters granted in Georgia were insufficient; Conf. Rep. 68. But the supreme court have since held that letters testamentary granted in South Carolina were sufficient to enable an executor to sue in North Carolina; 1 Car. Law, 471. See 1 Hayw. 355; 2 Murph. 268.

Ohio. Executors and administrators appointed under the authority of another state may, by virtue of such appointment, sue and be sued in this state, but they may be compelled at any time, by any legatee, creditor, or distributee in the state, upon an allegation that they are wasting the estate, to give bonds with security for the securing of the claims thereon; Rev. Stat. (1880), §§ 6129–6133. Upon filing a duly authenticated copy of said letters in the probate court, and of the bond originally given by them to secure the faithful application of the money in their hands, or, if there be no such bond, or the surety thereon shall seem to the said probate court insufficient, upon giving new and sufficient securities, they may be authorized to sell decedent's real estate as in the case of executors and administrators taking out letters within the state; *id.* § 6168; 38 Ohio Stat. p. 146; Act of March 23, 1840; Swan's Coll. 184.

Oregon. Letters testamentary, or of administration, shall not be granted to a non-resident; and when an executor or administrator shall become non-resident, the probate court having jurisdiction of the estate of the testator or intestate of such executor or administrator shall revoke his letters.

Pennsylvania. Executors and administrators

could originally sue in this state by virtue of foreign letters; 1 Binn. 63. The rule is now otherwise by the Act of March 15, 1832, sec. 6. It is provided that letters testamentary or of administration, or otherwise purporting to authorize any person to intermeddle with the estate of a decedent, granted out of the commonwealth, do not in general confer on any such person any of the powers and authorities possessed by an executor or administrator under letters granted within the state. But by the act of April 14, 1835, sec. 3, this rule is declared not to apply to any public debt or loan of this commonwealth; but such public debt or loan shall pass and be transferable, and the dividends thereon accrued and to accrue be receivable, in like manner and in all respects and under the same and no other regulations, powers, and authorities as were used and practised before the passage of the abovementioned act. And the act of June 16, 1836, sec. 3, declares that the above act of March 15, 1832, sec. 6, shall not apply to shares of stock in any bank or other incorporated company within this commonwealth, but such shares of stock shall pass and be transferable, and the dividends thereon accrued and to accrue be receivable, in like manner in all respects, and under the same regulations, powers, and authorities, as were used and practised with the loans or public debt of the United States, and were used and practised with the loans or public debt of this commonwealth, before the passage of the said act of March 15, 1832, sec. 6, unless the by-laws, rules, and regulations of any such bank or corporation shall otherwise provide and declare.

Rhode Island. It does not appear to be settled whether executors and administrators appointed in another state may, by virtue of such appointment, sue in this; 3 Griffith, Law Reg. 107, 108. A foreign administrator of a person not domiciled in the state may, upon filing a copy of his letters in the probate court, filing a bond with surety to account to said court, and giving thirty days' notice of his application, obtain permission from said court to sell the personalty of decedent. But no such application is granted if any creditor of the deceased residing in the state shall, pending said application, make objection thereto in writing before said court, accompanied by an affidavit that his debt is justly due; Sandf. Stat. (1872) 382, § 33.

South Carolina. Executors and administrators of other states cannot, as such, sue in South Carolina; they must take out letters in this state; 4 Griffith, Law Reg. 848.

Tennessee. An act of 1809 (Car. & Nich. Comp. 78) was once in force, enabling foreign executors and administrators to sue in the courts, but it has been repealed.

Texas. "When a will has been admitted to probate in any of the United States or the territories thereof or of any country out of the limits of the United States, and the executor or executors named in such will have qualified, and a copy of such will and of the probate thereof has been filed and recorded in any court of this state, ... and letters of administration with such will annexed have been granted to any other person or persons than the executors therein named, upon the application of such executor or executors, or any one of them, such letters shall be revoked, and letters testamentary shall be issued to such applicant;" Paschal's Dig. (1866), art. 1276.

Utah. No statutory provisions exist, and no cases are reported upon the point.

Vermont. If the deceased person shall, at the time of his death, reside in any other state or country, leaving estate to be administered in this state, administration thereof shall be granted by the probate court of the district in which there shall be estate to administer; and the administration first legally granted shall extend to all the estate of the deceased in this state, and shall exclude the jurisdiction of the probate court of every other district; Gen. Stat. (1870) 372, 373, §§ 18, 19.

Virginia. Authenticated copies of wills, proved according to the laws of any of the United States, or of any foreign country, relative to any estate in Virginia, may be offered for probate in the general court; or, if the estate lie altogether in any one county or corporation, in the circuit, county, or corporation court of such county or corporation; 3 Griffith, Law Reg. 345. It is understood to be the settled law of Virginia, though there is no statutory provision on the subject, that no probate of a will or grant of administration in another state of the Union, or in a foreign country, and no qualification of an executor or administrator elsewhere than in Virginia, give any such executor or administrator any right to demand the effects or debts of the decedent which may happen to be within the jurisdiction of the state. There must be a regular probate or grant of administration and qualification of the executor or administrator in Virginia, according to her laws. And the doctrine prevails in the federal courts held in Virginia, as well as in the state courts; 3 Griffith, Law Reg. 348.

West Virginia. The law is the same as in Virginia.

Wisconsin. When an executor or administrator shall be appointed in any other state, or in any foreign country, on the estate of any person dying out of this state, and no executor or administrator shall be appointed in this state, the foreign executor may file an authenticated copy of his appointment in the county court of any county in which there may be property of the deceased.

Upon filing such authenticated copy of his appointment, such foreign executor or administrator may thereafter exercise full power over said estate, sue and be sued, demand and receive personalty and real estate, and obtain license from the court to sell said real estate and make conveyance thereof, in like manner as executors and administrators obtaining letters in the state may do; Rev. Stat. (1878), § 3267.

Wyoming. No statutory provisions exist, and no cases are reported upon the point.

LETTING OUT. In American Law. The act of awarding a contract.

This term is much used in the United States, and most frequently in relation to contracts to construct railroads, canals, or other mechanical works. When such an undertaking has reached the point of actual construction, a notice is generally given that *proposals* will be received until a certain period, and thereupon a *letting out*, or award of portions of the work to be performed according to the proposals, is made. See 35 Ala. N. S. 55.

LEVANDÆ NAVIS CAUSA (Lat.). **In Civil Law.** For the sake of lightening the ship. See *Leg. Rhod. de jactu.* Goods thrown overboard with this purpose of lightening the ship are subjects of a general average.

LEVANT AND COUCHANT (Lat. *Levantes et cubantes*). A term applied to cattle that have been so long on the ground of another that they have lain down, and are risen up to feed, until which time they cannot be distrained by the owner of the lands, if the

lands were not sufficiently fenced to keep out cattle. 3 Bla. Com. 8, 9; Mozl. & W.

LEVARI FACIAS (Lat. that you cause to be levied). **In Practice.** A writ of execution directing the sheriff to cause to be made of the lands and chattels of the judgment debtor the sum recovered by the judgment.

Under this writ the sheriff was to sell the goods and collect the rents, issues, and profits of the land in question. It has been generally superseded by the remedy by *elegit*, which was given by statute Westm. 2d (13 Edw. I.), c. 18. In case, however, the judgment debtor is a clerk, upon the sheriff's return that he has no lay fee, a writ in the nature of a *levari facias* goes to the bishop of the diocese, who thereupon sends a sequestration of the profits of the clerk's benefice, directed to the churchwardens, to collect and pay them to the plaintiff till the full sum be raised. Yet the same course is pursued upon a *fi. fa.* 2 Burn, Eccl. Law, 329. See 2 Tidd, Pr. 1042; Comyns, Dig. *Execution* (c. 4); Finch, Law, 471; 3 Bla. Com. 471.

In American Law. A writ used to sell lands mortgaged, after a judgment has been obtained by the mortgagee, or his assignee, against the mortgagor, under a peculiar proceeding authorized by statute. 3 Bouvier, Inst. n. 3396.

LEVATO VELO (Lat.). An expression used in the Roman law, *Code*, 11. 4. 5, and applied to the trial of wreck and salvage. Commentators disagree about the origin of the expression; but all agree that its general meaning is that these causes shall be heard summarily. The most probable solution is that it refers to the place where causes were heard. A sail was spread before the door and officers employed to keep strangers from the tribunal. When these causes were heard, this sail was raised, and suitors came directly to the court, and their causes were heard immediately. As applied to maritime courts, its meaning is that causes should be heard without delay. These causes require despatch, and a delay amounts practically to a denial of justice. Emerigon, Des Assurances, c. 26, sect. 3.

LEVIR. A husband's brother. Vicat, Voc. Jur.

LEVITICAL DEGREES. Those degrees of kindred, set forth in the eighteenth chapter of Leviticus, within which persons are prohibited to marry.

LEVY. To raise. Webster, Dict. To levy a nuisance, *i. e.* to raise or do a nuisance, 9 Co. 55; to levy a fine, *i. e.* to raise or acknowledge a *fine*, 2 Bla. Com. 357; 1 Steph. Com. 236; to levy a tax, *i. e.* to raise or collect a tax; to levy war, *i. e.* to raise or begin war, to take arms for attack, 4 Bla. Com. 81; to levy an execution, *i. e.* to raise or levy so much money on execution. Reg. Orig. 298.

In Practice. A seizure; the raising of the money for which an execution has been issued.

In order to make a valid levy on personal property, the sheriff must have it within his power and control, or at least within his view; and if, having it so, he makes a levy upon it, it will be good if followed up afterwards within a reasonable time by his taking possession in such manner as to apprise everybody of the fact of its having been taken into execution. It is not necessary that an inventory should be made, nor that the sheriff should immediately remove the goods or put a person in possession; 3 Rawle, 405, 406; 1 Whart. 377; 2 S. & R. 142; 1 Wash. C. C. 29; 46 Penn. 294. A levy on a leasehold need not be in view of the premises if sufficiently descriptive; 77 Penn. 103. The usual mode of making levy upon real estate is to describe the land which has been seized under the execution, by metes and bounds, as in a deed of conveyance; 3 Bouvier, Inst. n. 3391; 1 T. & H. Pr. § 1216.

It is a general rule that when a sufficient levy has been made the officer cannot make a second; 12 Johns. 208; 8 Cow. 192.

LEVYING WAR. In Criminal Law. The assembling of a body of men for the purpose of effecting by force a treasonable object; and all who perform any part, however minute, or however remote from the scene of action, and who are leagued in the general conspiracy, are considered as engaged in levying war, within the meaning of the constitution; 4 Cra. 473, 474; Const. art. 3, s. 3. See TREASON; Fries Trial, Pamphl. This is a technical term, borrowed from the English law, and its meaning is the same as it is when used in stat. 25 Ed. III.; 4 Cra. 471; U. S. *vs.* Fries, Pamphl. 167; Hall, Am. L. J. 351; Burr's Trial; 1 East, Pl. Cr. 62–77; Alison, Cr. Law of Scotl. 606; 9 C. & P. 129. Where war has been levied, all who aid in its prosecution by performing any part in furtherance of the common object, however minute, or however remote from the scene of action, are guilty of treason; 2 Abbott, 364.

LEX (Lat.). The law. A law for the government of mankind in society. Among the ancient Romans this word was frequently used as synonymous with right, *jus*. When put absolutely, it means the Law of the Twelve Tables.

LEX DOMICILII. See DOMICIL.

LEX FALCIDIA. See FALCIDIAN LAW.

LEX FORI (Lat. the law of the forum). The law of the country, to the tribunal of which appeal is made. 5 Cl. & F. 1.

The forms of remedies, modes of proceeding, and execution of judgments are to be regulated solely and exclusively by the laws of the place where the action is instituted; 8 Cl. & F. 121; 11 M. & W. 877; 10 B. & C. 903; 5 La. 295; 2 Rand. 303; 6 Humphr. 45; 2 Ga. 158; 13 N. H. 321; 24 Barb. 68; 4 Zabr. 333; 9 Gill, 1; 17 Penn. 91; 18 Ala. N. S. 248; 4 McLean, 540; 11 Ind. 385; 33 Miss. 423; 12 Vt. 48; 91 U. S. 406; 36 Conn. 39; 2 Woods, C. C. 244; 26 Ark. 368; 83 Ill. 365; 27

Iowa, 251; 42 Miss. 444; 26 Ark. 358; 52 N. Y. 429. See PARTIES.

The *lex fori* is to decide who are proper parties to a suit; 11 Ind. 485; 33 Miss. 423; Merlin, Rép. Etrang. § II.; Westlake, Priv. Int. Law, 409.

The *lex fori* governs as to the nature, extent, and character of the remedy; 17 Conn. 500; 37 N. H. 86; 2 Pat. & H. 144; as, in case of instruments considered sealed where made, but not in the country where sued upon; 5 Johns. 239; 1 B. & P. 360; 3 Gill & J. 234; 3 Conn. 523; 27 Iowa, 251; 91 U. S. 406; 9 Mo. 56, 157.

Arrest and imprisonment may be allowed by the *lex fori*, though they are not by the *lex loci contractus;* 2 Burr. 1089; 5 Cl. & F. 1; 1 B. & Ad. 284; 14 Johns. 346; 3 Mas. 88; 10 Wheat. 1.

For the law of interest as affected by the *lex fori*, see CONFLICT OF LAWS. For the law in relation to damages, see DAMAGES.

The forms of judgment and execution are to be determined by the *lex fori;* 3 Mass. 88; 5 *id.* 378; 4 Conn. 47; 14 Pet. 67.

The *lex fori* decides as to deprivation of remedy in that jurisdiction.

Where a debt is discharged by the law of the place of payment, such discharge will amount to a discharge everywhere; 5 East, 124; 12 Wheat. 360; 1 W. Blackst. 258; 13 Mass. 1; 16 Mart. La. 297; 7 Cush. 15; 1 Woodb. & M. 115; 23 Wend. 87; 5 Binn. 332; 16 Me. 206; 2 Blackf. 366; unless such discharge is held by courts of another jurisdiction to contravene natural justice; 13 Mass. 6; 1 South. 192. It must be a discharge from the debt, and not an exemption from the effect of particular means of enforcing the remedy; 14 Johns. 346; 8 B. & C. 479; 1 Atk. 255; 2 H. Blackst. 553; 7 Me. 337; 11 Mart. La. 730; 15 Mass. 419; 5 Mas. 387.

Under the constitution of the United States, the insolvent laws of the various states which purport to discharge the debt are, at most, allowed that effect only as against their own citizens; as between their own citizens and strangers, where the claims of the latter have not been proved, they only work a destruction in the remedy; 5 Mas. 375; 4 Conn. 47; 14 Pet. 67; 12 Wheat. 213, 358, 369; 8 Pick. 194; 3 Iowa, 299; at least, if there be no provision in the contract requiring performance in the state where the discharge is obtained; 9 Conn. 314; 13 Mass. 18, 20; 7 Johns. Ch. 297; 1 Breese, 16; 4 Gill & J. 509. In the United States and some state courts, the discharge of a citizen of the state, granting a discharge from an obligation, is not a bar against a citizen of another state, although the contract creating the obligation was to be performed in the state granting the discharge; 1 Wall. 223; 3 Keyes, 30; 5 Md. 1; 25 Conn. 603; 48 Me. 9; 2 Blackf. 394; but see 2 Gray, 43. If claims are proved, they may work a discharge; 3 Johns. Ch. 435; 26 Wend. 43; 3 Pet. 411; 2 How. 202; 5 *id.* 295, 299; 8 Metc. 129; 7 Cush. 45; 2 Blackf. 394. See INSOLVENCY.

Statutes of limitation affect the remedy only; and hence the *lex fori* will be the governing law; 6 Dow, P. C. 116; 5 Cl. & F. 1–16; 8 *id.* 121, 140; 11 Pick. 36; 7 Ind. 91; 2 Paine, 437; 36 Me. 362; 83 Ill. 365; 68 N. Y. 33; see 9 B. Monr. 518; 16 Ohio, 145. But these statutes restrict the remedy for citizens and strangers alike; 10 B. & C. 903; 2 Bingh. N. C. 202, 216; 5 Cl. & F. 1; 3 Johns. Ch. 190; 6 Wend. 475; 9 Mart. La. 526. For the effect of a discharge by statutes of limitation, where they are so drawn as to effect a discharge, in a foreign state, see Story, Confl. Laws, § 582; 11 Wheat. 361; 2 Bingh. N. C. 202; 6 Rob. La. 15; 3 Hen. & M. 57. The restriction applies to a suit on a foreign judgment; 5 Cl. & F. 1–21; 13 Pet. 312; 2 B. & Ad. 413; 4 Cow. 528, n. 10; 1 Gall. 371; 9 How. 407.

The right of set-off is to be determined by the *lex fori;* 2 N. H. 296; 6 B. Monr. 301; 83 Ill. 365; 3 Johns. 263; see 13 N. H. 126. Liens, implied hypothecations, and priorities of claim generally, are matters of remedy; 12 La. An. 289. But only, it would seem, where the property affected is within the jurisdiction of the courts of the forum; Wharton, Confl. L. §§ 317–324; 5 Cra. 289. See L. R. 3 Ch. Ap. 484. A prescriptive title to personal property acquired in a former domicil will be respected by the *lex fori;* 17 Ves. 88; 3 Hen. & M. 57; 5 Cra. 358; 11 Wheat. 361; 1 Coldw. 43; 5 B. Monr. 521; 16 Hun, 80.

Questions of the admissibility and effect of evidence are to be determined by the *lex fori;* 12 La. An. 410; 12 Barb. 631; 7 Ohio St. 134; 2 Bradf. Surr. 339. See EVIDENCE.

The *lex loci* is presumed to be that of the forum till the contrary is shown; 4 Iowa, 464; 40 Me. 247; 6 N. Y. 447; 13 Md. 392; 12 La. An. 673; 9 Gill, 1; 70 Penn. 252; and also the *lex rei sitæ;* 1 H. & J. 687. See FOREIGN LAWS; AUTHENTICATION.

LEX LOCI (Lat.). The law of the place. This may be either *lex loci contractus aut actus* (the law of the place of making the contract or of the thing done); *lex loci rei sitæ* (the law of the place where the thing is situated); *lex loci domicilii* (the law of the place of domicil).

In general, however, *lex loci* is only used for *lex loci contractus aut actus.*

CONTRACTS. It is a general principle applying to contracts made, rights acquired, or acts done relative to personal property, that the law of the place of making the contract, or doing the act, is to govern it and determine its validity or invalidity, as well as the rights of parties under it in all matters touching the modes of execution and authentication of the form or instrument of contract; and also in relation to the use and meaning of the language in which it is expressed, the construction and interpretation of it, the legal duties and obligations imposed by it, and the legal

rights and immunities accquired under it; 1 Bingh. N. C. 151, 159; 8 Cl. & F. 121; 1 Pet. 317; 2 N. H. 42; 13 *id.* 321; 6 Vt. 102; 2 Mass. 88, 89; 7 Cush. 30; 3 Conn. 253, 472; 14 *id.* 583; 22 Barb. 118; 17 Penn. 91; 2 H. & J. 193; 3 Dev. 161; 8 Mart. La. 95; 4 Ohio St. 241; 14 B. Monr. 556; 19 Mo. 84; 4 Fla. 404; 23 Miss. 42; 12 La. An. 607; 3 Stor. 465; Ware, 402; 91 U. S. 406; 24 N. J. L. 319; 36 Conn. 39; 2 Woods, C. C. 244; 65 Barb. 265; 2 Kent, 39. As to the rule permitting an *election* of the law under which certain contracts may be governed, see Whart. Confl. L. § 678 *et seq.*

This principle, though general, does not, however, apply where the parties at the time of entering into the contract had the law of another country in view, or where the *lex loci* is in itself unjust, *contra bonos mores* (against good morals), or contrary to the public law of the state, as regarding the interests of religion or morality, or the general well-being of society; Ferg. Marr. & D. 385; 2 Burr. 1077; 9 N. H. 271; 6 Pet. 172; 1 How. 169; 17 Johns. 511; 13 Mass. 23; 5 Cl. & F. 11, 13; 8 *id.* 121; 6 Whart. 331; 2 Metc. Mass. 8; 1 B. Monr. 32; 5 Ired. 590; 2 Kent, 458; Story, Confl. Laws, § 280; or the rights of citizens of the former; 12 Barb. 631; 13 Mass. 6. And where the place of performance is different from the *locus contractus*, it is presumed the parties had the law of the former in mind.

The validity or invalidity of a contract as affected by the *lex loci* may depend upon the capacity of the parties or the legality of the act to be done.

The capacity of the parties as affected by questions of minority or majority, incapacities incident to coverture, guardianship, emancipation, and other personal qualities or disabilities, is to be decided by the law of the place of making the contract; Story, Confl. Laws, § 103; 1 Grant, Cas. 51.

The question of disability to make a contract on account of infancy is to be decided by the *lex loci;* 3 Esp. 163, 597; 17 Mart. La. 597; 8 Johns. 189; 1 Grant, Cas. 51; 2 Kent, 233. So, also, as to contracts made by married women; Al. 72; 8 Johns. 189; 13 La. 177; 5 East, 31.

Personal disqualifications not arising from the law of nature, but from positive law, and especially such as are penal, are strictly territorial, and are not to be enforced in any country other than that where they originate; Story, Confl. Laws, §§ 91, 92, 104, 620–625; 2 Kent, 459. See Whart. Confl. L. § 101 *et seq.;* 67 Barb. 9.

Natural disabilities, such as insanity, imbecility, etc., are everywhere recognized, so that the question whether they are controlled by the *lex loci* or *lex domicilii* seems to be theoretic rather than practical. On principle, there seems to be no good reason why they should come under a different rule from the positive disabilities.

The legality or illegality of the contract will be determined by the *lex loci*, unless it affects injuriously the public morals or rights, contravenes the policy or violates a public law of the country where a remedy is sought; 2 Kent, 458.

A contract illegal by the law of the place of its making and performance will generally be held so everywhere; 1 Gall. 375; 2 Mass. 88, 89; 2 N. H. 42; 2 Mas. 459; 13 Pet. 65, 78; 2 Johns. Cas. 355; 1 N. & M'C. 173; 2 H. & J. 193, 221, 225; 17 Ill. 328; 16 Tex. 344; 2 Burr. 1077; 2 Kent, 458; Henry, For. Law, 37, 50; Story, Confl. Laws, § 243.

An exception is said to exist in case of contracts made in violation of the revenue laws; Cas. *temp.* Hardw. 85; 2 C. Rob. 6; 1 Dougl. 251; 1 Cowp. 341; 2 Cr. M. & R. 311; 2 Kent, 458.

A contract legal by the *lex loci* will be so everywhere; 13 La. An. 117; unless—

It is injurious to public rights or morals; 3 Burr. 1568; 2 C. & P. 347; 4 B. & Ald. 650; 1 B. & P. 340; 6 Mass. 379; 2 H. & J. 193; *or contravenes the policy;* 2 Bingh. 314; 2 Sim. Ch. 194; 16 Johns. 438; 5 Harr. Del. 31; 1 Green, Ch. 326; 17 Ga. 253. In this connection, it is held generally that the claims of citizens are to be preferred to those of foreigners in case of a conflict of rights. Assignments, under the insolvent laws of a foreign state, are usually held inoperative as against claims of a citizen of the state, in regard to personal property in the jurisdiction of the *lex fori;* 1 Green, Ch. 326; 5 Harr. Del. 31; 32 Miss. 246; 13 La. An. 280; 21 Barb. 198; but see 12 Md. 54; 13 *id.* 392. *Or violates a positive law* of the *lex fori.* The application of the *lex loci* is a matter of comity; and that law must, in all cases, yield to the positive law of the place of seeking the remedy; 18 Pick. 193; 1 Green, Ch. 326; 12 Barb. 631; 17 Miss. 247. See 10 N. Y. 53.

The interpretation of contracts is to be governed by the law of the country where the contract was made; Dougl. 201, 207; 2 B. & Ad. 746; 1 B. & Ad. 284; 10 B. & C. 903; 2 Hagg. Cons. 60, 61; 8 Pet. 361; 30 Ala. N. S. 253; 4 McLean, 540; 2 Bla. Com. 141; Story, Confl. Laws, § 270.

The *lex loci* governs as to the formalities and authentication requisite to the valid execution of contracts; Story, Confl. Laws, §§ 123, 260; 11 La. 14; 2 Hill, N. Y. 227; 37 N. H. 86; 30 Vt. 42. But in proving the existence of, and seeking remedies for, the breach, as well as in all questions relating to the competency of witnesses, course of procedure, etc., the *lex fori* must govern; 11 Ind. 385; 9 Gill, 1; 17 Penn. 91; 18 Ala. N. S. 248; 4 McLean, 540; 3 *id.* 545; 5 How. 83; 6 Humphr. 75; 17 Conn. 500; 9 Mo. 56, 157; 4 Gilm. 521; 26 Barb. 177; Story, Confl. Laws, §§ 567, 634.

The *lex loci* governs as to the obligation and construction of contracts; 11 Pick. 32; 8 Vt. 325; 12 N. H. 520; 12 Wheat. 213;

2 Keen, 293; 1 B. & P. 138; 12 Wend. 439; 13 Mart. La. 202; 14 B. Monr. 556; 15 Miss. 798; unless, from their tenor, it must be presumed they were entered into with a view to the laws of some other state; 13 Mass. 1. This presumption arises where the place of performance is different from the place of making; 31 E. L. & Eq. 433; 17 Johns. 511; 13 Pet. 65; 9 La. An. 185; 13 Mass. 23; 91 U. S. 406; 2 Woods, 244.

A lien or privilege affecting personal estate, created by the *lex loci*, will generally be enforced wherever the property may be found; 8 Mart. 95; 5 La. 295; Story, Confl. Laws, § 402; but not necessarily in preference to claims arising under the *lex fori*, when the property is within the jurisdiction of the court of the forum; 5 Cra. 289, 298; 12 Wheat. 361; Whart. Confl. L. § 324.

A discharge from the performance of a contract under the *lex loci* is a discharge everywhere; 5 Mass. 509; 13 *id.* 1, 7; 7 Cush. 15; 4 Wheat. 122, 209; 12 *id.* 213; 2 Mas. 161; 2 Blackf. 394; 24 Wend. 43; 2 Kent, 394. A distinction is to be taken between discharging a contract and taking away the remedy for a breach; 3 Mas. 88; 5 *id.* 378; 4 Conn. 47; 12 Wheat. 347; 8 Pick. 194; 9 Conn. 314; 2 Blackf. 394; 9 N. H. 478.

As to the effect of a discharge from an obligation by a state insolvent law upon a debt due a citizen of another state, see LEX FORI.

Statutes of limitations apply to the remedy, but do not discharge the debt; 9 How. 407; 20 Pick. 310; 2 Paine, 437; 2 Mas. 751; 6 N. H. 557; 6 Vt. 127; 8 Port. (Ala.) 84. See LIMITATIONS, STATUTE OF.

A question of some difficulty often arises as to what the *locus contractus* is, in the case of contracts made partly in one country or state and partly in another, or made in one state or country to be performed in another, or where the contract in question is accessory to a principal contract.

Where a contract is made partly in one country and partly in another, it is a contract of the place where the assent of the parties first concurs and becomes complete; 2 Parsons, Contr. 94; 27 N. H. 217, 244; 11 Ired. 303; 3 Strobh. 27; 1 Gray, 336.

As between the place of making and the place of performance, where a place of performance is specified, the law of the place of performance governs as to obligation, interpretation, etc.; 5 East, 124; 3 Caines, 154; 1 Gall. 371; 12 Vt. 648; 12 Pet. 456; 1 How. 182; 8 Paige, Ch. 261; 5 McLean, 448; 27 Vt. 8; 14 Ark. 189; 7 B. Monr. 575; 9 Mo. 56, 157; 4 Gilm. 521; 21 Ga. 135; 30 Miss. 59; 7 Ohio, 134; 4 Mich. 450; 62 N. Y. 151; 24 Iowa, 412; 2 Kent, 459. But see 11 Tex. 54. See Whart. Confl. L. § 40.

Where the contract is to be performed generally, the law of the place of making governs; 2 B. & Ald. 301; 5 Cl. & F. 12; 1 B. & C. 16; 1 Metc. Mass. 82; 6 Cra. 221; 6 Ired. 107; 17 Miss. 220.

If the contract is to be performed partly in one state and partly in another, it will be affected by the law of both states; 91 U. S. 406; 14 B. Monr. 556; 22 Barb. 118. But see 2 Woods, 244; 24 Iowa, 412.

In cases of indorsement of negotiable paper, every indorsement is a new contract, and the place of each indorsement is its *locus contractus;* 2 Kent, 460; 17 Johns. 511; 9 B. & C. 208; 13 Mass. 1; 25 Ala. N. S. 139; 19 N. Y. 436; 17 Tex. 102.

The place of payment is the *locus contractus*, however, as between indorsee and drawer. See 19 N. Y. 436.

The place of acceptance of a draft is regarded as the *locus contractus;* 3 Gill, 430; 1 Q. B. 43; 4 Pet. 111; 8 Metc. 107; 4 Dev. 124; 6 McLean, 622; 9 Cush. 46; 13 N. Y. 290; 18 Conn. 138; 17 Miss. 220. See PROMISSORY NOTES; BILLS OF EXCHANGE.

The *lex loci* is presumed to be the same as that of the *forum*, unless shown to be otherwise; 46 Me. 247; 13 La. An. 673; 1 Sm. & M. 176; 70 Penn. 252; 13 Md. 392; 9 Gill, 1; 4 Iowa, 464. But see 1 Iowa, 388.

TORTS. Damages for the commission of a tortious act are to be measured by the law of the place where the act is done; 1 P. Wms. 395; 1 Pet. C. C. 225; Story, Confl. Laws, § 307.

An action for a tort committed in a foreign country will lie only when it is based upon an act which will be considered as tortious both in the place where committed and in the *locus fori;* in such case the law of the place where the tort was committed governs; L. R. 1 P. D. 107; *id.* 6 Q. B. 1; *id.* 2 P. C. 193. See 1 H. & C. 219; Whart. Confl. L. § 478; 54 Barb. 31.

MARRIAGE. As to the conflict of laws in relation to marriage, see MARRIAGE.

As to divorce, see DIVORCE; DOMICIL.

The law of all acts relating to real property is governed by the *lex rei sitæ*. Taking a mortgage as security does not, however, divest the *lex loci* of its force. See LEX REI SITÆ.

For *lex domicilii*, see DOMICIL.

LEX LONGOBARDORUM (Lat.). The name of an ancient code in force among the Lombards. It contains many evident traces of feudal policy. It survived the destruction of the ancient government of Lombardy by Charlemagne, and is said to be still partially in force in some districts of Italy.

LEX MERCATORIA (Lat.). That system of laws which, is adopted by all commercial nations, and which, therefore, constitutes a part of the law of the land. See LAW MERCHANT.

LEX REI SITÆ (Lat.). The law of the place of situation of the thing.

It is the universal rule of the common law that any title or interest in land, or in other real estate, can only be acquired or lost agreeably to the law of the place where the same

is situate; 6 Pick. 286; 1 Paige, Ch. 220; 2 Ohio, 124; 1 H. Blackst. 665; 2 Rose, 29; 2 Ves. & B. 130; 5 B. & C. 438; 6 Madd. Ch. 16; 7 Cra. 115; 10 Wheat. 192, 465; 4 Cow. N. Y. 510, 527; 1 Gill, 280; 6 Binn. 559; Story, Confl. Laws, §§ 365, 428; and the law is the same in this respect in regard to all methods whatever of transfer, and every restraint upon alienation; 12 E. L. & Eq. 206.

The *lex rei sitæ* governs as to the capacity of the parties to any transfer, whether testamentary or *inter vivos*, as affected by questions of minority or majority; 17 Mart. 569; of rights arising from the relation of husband and wife; Story, Confl. Laws, § 454; 9 Bligh, 127; 8 Paige, Ch. 261; 2 Md. 297; 1 Miss. 281; 4 Iowa, 381; 3 Strobh. 562; 9 Rich. Eq. 475; parent and child, or guardian and ward; 2 Ves. & B. 127; 1 Johns. Ch. 153; 4 Gill & J. 332; 9 Rich. Eq. 311; 14 B. Monr. 544; 11 Ala. N. S. 343; 18 Miss. 529; but see 7 Paige, Ch. 236; and of the rights and powers of executors and administrators, whether the property be real or personal; 2 Hamm. 124; 8 Cl. & F. 112; 4 M. & W. 71, 192; 2 Sim. & S. 284; 3 Cra. 319; 5 Pet. 518; 15 *id.* 1; 12 Wheat. 169; 2 N. H. 291; 4 Rand. 158; 2 Gill & J. 493; 5 Me. 261; 5 Pick. 65; 20 Johns. 229; 3 Day, 74; 1 Humph. 54; 7 Ind. 211; 10 Rich. 393; see EXECUTORS; of heirs; 5 B. & C. 451, 452; 6 Bligh, 479, n.; 9 Cra. 151; 9 Wheat. 566, 570; 10 *id.* 192; and of devisee or devisor; Story, Confl. Laws, § 474; 14 Ves. 337; 9 Cra. 151; 10 Wheat. 192; 37 N. H. 114.

So as to the forms and solemnities of the transfer, the *lex rei sitæ* must be complied with, whether it be a transfer by devise; 2 Dowl. & C. 349; 2 P. Wms. 291, 293; 14 Ves. 537; 7 Cra. 115; 10 Wheat. 192; 4 Johns. Ch. 260; 2 Ohio, 124; 37 N. H. 114; 5 R. I. 112, 413; 2 Jones, No. C. 368; see 4 McLean, 75; or by conveyance *inter vivos;* 9 Bligh, 127, 128; 2 Dowl. & C. 349; 1 Pick. 81; 1 Paige, Ch. 220; 11 Wheat. 465; 11 Tex. 755; 18 Penn. 170; 12 E. L. & Eq. 206. So as to the amount of property or extent of interest which may be acquired, held, or transferred; 3 Russ. Ch. 328; 2 Dow. & C. 393; and the question of what is real property; 1 W. Blackst. 234; 2 Burr. 1079; 6 Paige, Ch. 630; 3 Deac. & C. 704; 2 Salk. 666. And, generally, the *lex rei sitæ* governs as to the validity of any such transfer; 4 Sandf. 352; 23 Miss. 42; 11 Mo. 314; 2 Bradf. Surr. 339. As to the disposition of the proceeds, see 12 E. L. & Eq. 206. As to the interpretation and construction of wills, see DOMICIL.

The rules here given do not apply to personal contracts indirectly affecting real estate; 1 Halst. Ch. 631; Story, Confl. Laws, § 351, d.

A contract for the conveyance of lands valid by the *lex fori* will be enforced in equity by a decree *in personam* for a conveyance valid under the *lex rei sitæ;* 1 Ves. 144; 2 Paige, Ch. 606; Wythe, 135; 6 Cra. 148.

An executory foreign contract for the conveyance of lands not repugnant to the *lex rei sitæ* will be enforced in the courts of the latter country by personal process; 8 Paige, Ch. 201; 23 E. L. & Eq. 288; 4 Bosw. 266.

LEX TALIONIS (Lat.). The law of retaliation: an example of which is given in the law of Moses, an eye for an eye, a tooth for a tooth, etc.

Amicable retaliation includes those act of retaliation which correspond to the acts of the other nation under similar circumstances.

Jurists and writers on international law are divided as to the right of one nation punishing with death, by way of retaliation, the citizens or subjects of another nation. In the United States no example of such barbarity has ever been witnessed; but prisoners have been kept in close confinement in retaliation for the same conduct towards American prisoners. See Rutherforth, Inst. b. 2, c. 9; Marten, Law of Nat. b. 8, c. 1, s. 3, note; 1 Kent, 93; Wheaton, Int. Law, pt. 4, c. 1, § 1.

Vindictive retaliation includes those acts which amount to a war.

LEX TERRÆ (Lat.). The law of the land. See DUE PROCESS OF LAW.

LEY (Old French; a corruption of *loi*). Law. For example, Termes de la Ley, Terms of the Law. In another, and an old technical, sense, ley signifies an oath, or the oath with compurgators; as, il tend sa *ley* aiu pleyntiffe. Britton, c. 27.

LEY GAGER. Wager of law. An offer to make an oath denying the cause of action of the plaintiff, confirmed by *compurgators* (*q. v.*), which oath used to be allowed in certain cases. When it was accomplished, it was called the "doing of the law," "*fesans de ley.*" Termes de la Leye, *Ley;* 2 B. & C. 538; 3 B. & P. 297; 3 & 4 Will. IV. c. 42, § 16.

LEYES DE ESTILLO. In Spanish Law. Laws of the age. A book of explanations of the *Fuero Real*, to the number of two hundred and fifty-two, formed under the authority of Alonzo X. and his son Sancho, and of Fernando el Emplazado, and published at the end of the thirteenth century or beginning of the fourteenth, and some of them are inserted in the New Recopilacion. See 1 New Recop. p. 354.

LIABILITY. Responsibility; the state of one who is bound in law and justice to do something which may be enforced by action. This liability may arise from contracts either express or implied, or in consequence of torts committed.

LIBEL (Lat. *liber*). **In Practice.** The plaintiff's written statement of his cause of action and of the relief which he seeks, made and exhibited in a judicial process, with some solemnity of law.

A written statement by a plaintiff of his cause of action, and of the relief he seeks to obtain in a suit; Law, Eccl. Law, 17; Ayliffe, Par. 346; Shelf. Marr. & D. 506; Dunl. Adm. Pract. 111. It performs substantially the same office in the ecclesiastical and admiralty courts, as the bill in chancery does in equity proceedings and the declaration in common-law practice.

The libel should be a narrative, specific, clear, direct, certain, not general nor alternative; 3 Law, Eccl. Law, 147; Dunl. Adm. Pract. 113. It should contain, substantially, the following requisites: (1) the name, description, and addition of the plaintiff, who makes his demand by bringing his action; (2) the name, description, and addition of the defendant; (3) the name of the judge, with a respectful designation of his office and court; (4) the thing or relief, general or special, which is demanded in the suit; (5) the grounds upon which the suit is founded.

The form of a libel is either simple or articulate. The simple form is when the cause of action is stated in a continuous narration, when the cause of action can be briefly set forth. The articulate form is when the cause of action is stated in distinct allegations or articles; 3 Law, Eccl. Law, 148; Hall, Adm. Pr. 123; 7 Cra. 394. The material facts should be stated in distinct articles in the libel, with as much exactness and attention to times and circumstances as in a declaration at common law; 4 Mas. 541.

Although there is no fixed formula for libels, and the courts will receive such an instrument from the party in such form as his own skill or that of his counsel may enable him to give it, yet long usage has sanctioned forms, which it may be most prudent to adopt. The parts and arrangement of libels commonly employed are:

First, the address to the court: as, To the Honorable William Butler, Judge of the District Court of the United States for the Eastern District of Pennsylvania.

Second, the names and descriptions of the parties. Persons competent to sue at common law may be parties libellants. The same regulations obtain in the admiralty courts and the common-law courts respecting those disqualified from suing in their own right or name. Married women prosecute by their husbands, or by *prochein ami*, when the husband has an adverse interest to hers; minors, by guardians, tutors, or *prochein ami;* lunatics and persons *non compos mentis*, by tutor, guardian *ad litem*, or committee; the rights of deceased persons are prosecuted by executors or administrators; and corporations are represented and proceeded against as at common law.

Third, the averments or allegations setting forth the cause of action. These should be conformable to the truth, and so framed as to correspond with the evidence. Every fact requisite to establish the libellant's right should be clearly stated, so that it may be directly met by the opposing party by admission, denial, or avoidance: this is the more necessary, because no proof can be given, or decree rendered, not covered by and conformable to the allegations; 1 Law, Eccl. Law, 150; Hall, Pr. 126; Dunl. Adm. Pr. 113; 7 Cra. 394. But the requirements upon these points are not so strict as in cases of declarations at common law; 7 Cra. 389; 9 Wheat. 386, 401. In no case is it necessary to assert anything which amounts to matters of defence to the claimant; 2 Gall. 485.

Fourth, the conclusion, or prayer for relief and process: the prayer should be for the specific relief desired; for general relief, as is usual in bills in chancery; the conclusion should also pray for general or particular process; 3 Law, Eccl. Law, 149; 3 Mas. 503.

Interrogatories are sometimes annexed to the libel: when this is the case, there is usually a special prayer, that the defendant may be required to answer the libel, and the interrogatories annexed and propounded. This, however, is a dangerous practice, because it renders the answers of the defendant evidence, which must be disproved by two witnesses, or by one witness corroborated by very strong circumstances.

The libel is the first proceeding in a suit in admiralty in the courts of the United States; 3 Mas. 504.

No *mesne* process can issue in the United States admiralty courts until a libel is filed; 1st Rule in admiralty of the U. S. supreme court. The twenty-second and twenty-third rules require certain statements to be contained in the libel; and to those, and the forms in 2 Conkling, Adm. Pract., the reader is referred. And see Parsons, Marit. Law; Dunl. Adm. Pr.; Hall, Adm. Pr.

In Torts. That which is written or printed, and published, calculated to injure the character of another by bringing him into ridicule, hatred, or contempt. *Parke*, J., 15 M. & W. 344.

Every thing, written or printed, which reflects on the character of another and is published without lawful justification or excuse, is a libel, whatever the intention may have been; 15 M. & W. 435.

A malicious defamation, expressed either in printing or writing, and tending either to blacken the memory of one who is dead or the reputation of one who is alive, and expose him to public hatred, contempt, or ridicule. Bac. Abr. tit. *Libel;* 1 Hawk. Pl. Cr. b. 1, c. 73, § 1; 4 Mass. 168; 2 Pick. 115; 9 Johns. 214; 1 Denio, 347; 9 B. & C. 172; 4 M. & R. 127; 2 Kent, 13.

It has been defined, perhaps with more precision, to be a censorious or ridiculous writing, picture, or sign made with a malicious or mischievous intent towards government, magistrates, or individuals. 3 Johns. Cas. 354; 9 Johns. 215; 5 Binn. 340; 68 Me. 295.

There is a great and well-settled distinction between verbal slander and written, printed,

or pictured libel; and this not only in reference to the consequences, as subjecting the party to an indictment, but also as to the character of the accusations or imputations essential to sustain a civil action to recover damages. To write and publish maliciously any thing of another which either makes him ridiculous or holds him out as a dishonest man, is held to be actionable, or punishable criminally, when the speaking of the same words would not be so; 1 Saund. 6th ed. 247 *a*; 4 Taunt. 355; 5 Binn. 219; Heard, Lib. & S. § 74; 6 Cush. 71; 19 Johns. 349; 6 Vt. 489.

The reduction of the slanderous matter to writing or printing is the most usual mode of conveying it. The exhibition of a libellous picture is equally criminal; 2 Campb. 512; 5 Co. 125 *b*; 2 S. & R. 91. Fixing a gallows at a man's door, burning him in effigy, or exhibiting him in any ignominious manner, is a libel; Hawk. Pl. Cr. b. 1, c. 73, s. 2; 11 East, 226. So a libel may be published by speaking or singing it in the presence of others; 7 Ad. & E. 233.

There is, perhaps, no branch of the law which is so difficult to reduce to exact principles, or to compress within a small compass, as the requisites of a libel.

In the following cases the publications have been held to be *actionable*. It is a libel to write of a person soliciting relief from a charitable society, that she prefers unworthy claims, which it is hoped the members will reject forever, and that she has squandered away money, already obtained by her from the benevolent, in printing circulars abusive of the secretary of the society; 12 Q. B. 624. It is libellous to publish of the plaintiff that, although he was aware of the death of a person occasioned by his improperly driving a carriage, he had attended a public ball in the evening of the same day; 1 Chitt. Bail, 480. It is a libel to publish of a Protestant archbishop that he endeavors to convert Roman Catholic priests by promises of money and preferment; 5 Bingh. 17. It is a libel to publish a ludicrous story of an individual in a newspaper, if it tend to render him the subject of public ridicule, although he had previously told the same story of himself; 6 Bingh. 409. It is a libel to publish of a candidate for congress that he is a "pettifogging shyster;" 40 Mich. 241;—or to write and publish of any man that he is "thought no more of than a horse thief and a counterfeiter;" 10 Mo. 648;—or to publish of a member of congress, "He is a fawning sycophant, a misrepresentative in congress, and a grovelling office seeker;" 9 Johns. 214. See 3 Cr. 8; 42 Vt. 252; 17 Gratt. 250; 47 Cal. 207; 105 Mass. 394.

A declaration which alleges that the defendant charged the plaintiff, an attorney, with being guilty of "sharp practice," which is averred to mean disreputable practice, charges a libellous imputation; 4 M. & W. 446.

Any publication which has a tendency to disturb the public peace, or good order of society, is *indictable* as a libel. "This crime is committed," says Professor Greenleaf, "by the publication of writings blaspheming the Supreme Being, or turning the doctrines of the Christian religion into contempt and ridicule; or tending, by their immodesty, to corrupt the mind, and to destroy the love of decency, morality, and good order; or wantonly to defame or indecorously to calumniate the economy, order, and constitution of things which make up the general system of the law and government of the country; to degrade the administration of government, or of justice; or to cause animosities between our own and any foreign government, by personal abuse of its sovereign, its ambassadors, or other public ministers; and by malicious defamations, expressed in printing or writing, or by signs or pictures, tending either to blacken the memory of one who is dead, or the reputation of one who is living, and thereby to expose him to public hatred, contempt, and ridicule. This descriptive catalogue embraces all the several species of this offence which are indictable at common law; all of which, it is believed, are indictable in the United States, either at common law, or by virtue of particular statutes." 3 Greenl. Ev. § 164. See 4 Mass. 163; 9 Johns. 214; 4 M'Cord, 317; 4 Mas. 115; 34 Me. 223; 3 How. 266.

Libels against the memory of the dead, which have a tendency to create a breach of the peace, by inciting the friends and relatives of the deceased to avenge the insult of the family, render their authors liable to indictment. The malicious intention of the defendant to injure the family and posterity of the deceased must be expressly averred and clearly proved; 5 Co. 125; 4 Term, 126, 129, note; 5 Binn. 281; Heard, Lib. & S. §§ 72, 348.

If the matter is understood as scandalous, and is calculated to excite ridicule or abhorrence against the party intended, it is libellous and indictable as such, however it may be expressed; 13 Metc. Mass. 68; 9 N. H. 34; 7 Conn. 266; 10 S. & R. 173; 32 Me. 530; 1 Denio, 41.

Evidence of publication in order to sustain an indictment upon a libel must be to the same effect as in case of a civil action brought thereon. The publication of the libel in order to warrant either civil action or indictment must be malicious; evidence of the malice may be either express or implied. Express proof is not necessary; for where a man publishes a writing which on the face of it is libellous, the law presumes he does so from that malicious intention which constitutes the offence, and it is unnecessary, on the part of the prosecution, to prove any circumstance from which malice may be inferred; 4 B. & C. 247; 6 Dowl. & R. 296; 18 Md. 177; 3 How. 266; 12 Conn. 262; 16 Mich. 447. But in all cases of libels published confidentially, and other privileged communications, express malice must be shown or inferred from

circumstances, and this is always a question for a jury; 8 B. & C. 578; 3 N. & M. 116; 4 Tyrw. 583; 30 Mé. 466; 3 Pick. 379; 1 Hawks, 472; 87 Penn. 385; 3 Metc. Mass. 193. But no allegation, however false and malicious, contained in answers to interrogatories in affidavits duly made, or any other proceedings in courts of justice, or petitions to the legislature, are indictable; 4 Co. 14 b; 2 Burr. 807; Hawk. Pl. Cr. b. 1, c. 73, s. 8; 1 Saund. 131, n. 1; 1 Lev. 240; 2 Chitty, Cr. L. 869; 2 S. & R. 23. It is no defence that the matter published is part of a document printed by order of the house of commons; 9 Ad. & E. 1. See JUDICIAL PROCEEDINGS; and generally, 2 Bishop, Cr. Law; Heard, Lib. & S.

In civil actions for libel it has always been held competent for the defendant to justify by pleading the truth in evidence; Heard, Lib. & S. 186; 1 R. I. 263; 6 La. An. 254; 5 Sandf. 54; 4 Sneed, 520.

In prosecutions, however, he may not do so; 11 Mod. 99; because, if the publication is malicious, it is equally to the public interest to punish the publisher of it, whether it was true or not.

The question as to the respective provinces of court and jury in trials of indictments for libel has given rise to one of the most interesting of legal controversies. Lord Mansfield, in 5 Burr. 2661, and in 20 How. St. Tr. 892, and Mr. Justice Buller, in the Dean of St. Asaph's case, 21 How. St. Tr. 847–1046, charged the jury that the only questions for them were whether the defendants had printed and published the paper in question, and whether the innuendoes therein were truly intended as avowed in the indictment, and that it was for the court alone to say whether the paper was a libel or not. This was stoutly denied to be the true state of the law, and accordingly an act known as "Fox's Libel Act" was passed in 1792, declaring that the jury may give a general verdict of guilty or not guilty in all such cases upon the whole matter put at issue, and shall not be required to find defendant guilty on mere proof of publication, and of the sense ascribed to the same in the indictment.

This statute is now generally conceded to be declaratory of the common law. The judge should instruct the jury as to what a libel is, and then leave it to them to say whether the facts necessary to constitute the offence have been proved to their satisfaction; 63 Penn. 253; 1 Minn. 156; 18 Penn. 489; 23 Vt. 14; 2 Camp. 478; 13 Metc. 120; 29 Me. 323; 21 How. St. Tr. 922. See generally Wharton, Bishop, Crim. Law; Starkie, Heard, Townsend, Odger, Lib. & Sl.

LIBEL OF ACCUSATION. In Scotch Law. The instrument which contains the charge against a person accused of a crime. Libels are of two kinds, namely, indictments and criminal letters.

Every libel assumes the form of what is termed, in logic, a syllogism. It is first stated that some particular kind of act is criminal, as that "theft is a crime of a heinous nature, and severely punishable." This proposition is termed the *major*. It is next stated that the person accused is guilty of the crime so named, "actor, or art and part." This, with the narrative of the manner in which, and the time when, the offence was committed, is called the *minor* proposition of the libel. The *conclusion* is that, all or part of the facts being proved, or admitted by confession, the panel "ought to be punished with the pains of the law, to deter others from committing the like crime in all time coming." Burton, Man. Pub. L. 300, 301.

LIBELLANT. The party who files a libel in an ecclesiastical or admiralty case, corresponding to the plaintiff in actions in the common-law courts.

LIBELLEE. A party against whom a libel has been filed in proceedings in an ecclesiastical court or in admiralty, corresponding to the defendant in a common-law suit.

LIBELLUS (Lat.). **In Civil Law.** A little book. *Libellus supplex*, a petition, especially to the emperor; all petitions to whom must be in writing. L. 15, D. *in jus voc.* *Libellum rescribere*, to mark on such petition the answer to it. L. 2, § 2, Dig. *de jur. fisc.* *Libellum agere*, to assist or counsel the emperor in regard to such petitions, L. 12, D. *de distr. pign.*; and one whose duty it is to do so is called *magister libellorum*. There were also *promagistri*. L. 1, D. *de offic. præf. pract.* *Libellus accusatorius*, an information and accusation of a crime. L. 17, § 1, & L. 29, § 8, *D. ad leg. Jul. de adult.* *Libellus divortii*, a writing of divorcement. L. 7, D. *de divort. et repud.* *Libellus rerum*, an inventory. Calv. Lex. *Libellus* or *oratio consultoria*, a message by which emperors laid matters before the senate. Calvinus, Lex.; Suet. Cæs. 56.

A writing in which are contained the names of the plaintiff (actor) and defendant (reus), the thing sought, the right relied upon, and name of the tribunal before which the action is brought. Calvinus, Lex.

Libellus appellatorius, an appeal. Calvinus, Lex.; L. 1, § ult., D. ff. *de appellat.*

In English Law (sometimes called *libellus conventionalis*). A bill. Bracton, fol. 112.

LIBELLUS FAMOSUS (Lat.). A libel; a defamatory writing. L. 15, D. *de pœn.*; Vocab. Jur. Utr. sub "*famosus.*" It may be without writing: as, by signs, pictures, etc. 5 Rep. *de famosis libellis.*

LIBER (Lat.). **In Civil Law.** A book, whatever the material of which it is made; a principal subdivision of a literary work: thus, the Pandects, or Digest of the Civil Law, is divided into fifty books. L. 52, D. *de legat.*

In Civil and Old English Law. Free: *e. g.* a free (*liber*) bull. Jacobs. Exempt from service or jurisdiction of another, Law Fr. & Lat. Dict.: *e. g.* a free (*liber*) man. L. 3, D. *de statu hominum.*

LIBER ASSISARUM (Lat.) The book of assigns or pleas of the crown; being the fifth part of the Year-Books.

LIBER FEUDORUM (Lat.). A code of the feudal law, which was compiled by direction of the emperor Frederick Barbarossa, and published in Milan, in 1170. It was called the *Liber Feudorum*, and was divided into five books, of which the first, second, and some fragments of the others still exist, and are printed at the end of all the modern editions of the Corpus Juris Civilis. Giannone, b. 13, c. 3; Cruise, Dig. prel. diss. c. 1, § 31.

LIBER HOMO (Lat.). A free man; a freeman lawfully competent to act as juror. Ld. Raym. 417; Kebl. 563.

In London, a man can be a *liber homo* either—1, by service, as having served his apprenticeship; or, 2, by birthright, being a son of a *liber homo;* or, 3, by redemption, *i. e.* allowance of mayor and aldermen. 8 Rep., Case of City of London. There was no intermediate state between *villein* and *liber homo*. Fleta, lib. 4, c. 11, § 22. But a *liber homo* could be vassal of another. Bract. fol. 25.

In Old European Law. An allodial proprietor, as opposed to a feudatory. Calvinus, Lex, *Alode*.

LIBER JUDICIARUM (Lat.). The book of judgment, or doom-book. The Saxon Domboc. Conjectured to be a book of statutes of ancient Saxon kings. See Jacob, *Domboc;* 1 Bla. Com. 64.

LIBER ET LEGALIS HOMO (Lat.). A free and lawful man. One worthy of being a juryman; he must neither be infamous nor a bondman. 3 Bla. Com. 340, 362; Bract. fol. 14 *b*; Fleta, l. 6, c. 25, § 4; l. 4, c. 5, § 4.

LIBERATE (Lat.). **In English Practice.** A writ which issues on lands, tenements, and chattels, being returned under an extent on a statute staple, commanding the sheriff to deliver them to the plaintiff, by the extent and appraisement mentioned in the writ of extent and in the sheriff's return thereto. See Comyns, Dig. *Statute Staple* (D 6).

LIBERATION. In Civil Law. The extinguishment of a contract, by which he who was bound becomes free or liberated. Wolff, Dr. de la Nat. § 749. Synonymous with payment. Dig. 50. 16. 47.

LIBERTI, LIBERTINI. In Roman Law. The condition of those who, having been slaves, had been made free. 1 Brown, Civ. Law, 99.

There is some distinction between these words. By *libertus* was understood the freedman when considered in relation to his patron, who had bestowed liberty upon him; and he was called *libertinus* when considered in relation to the state he occupied in society subsequent to his manumission. Lec. El. Dr. Rom. § 93.

LIBERTY (Lat. *liber*, free; *libertas*, freedom, liberty). Freedom from restraint. The faculty of willing, and the power of doing what has been willed, without influence from without.

A privilege held by grant or prescription, by which some men enjoy greater privileges than ordinary subjects.

The place within which certain privileges or immunities are enjoyed, or jurisdiction is exercised, as the liberties of a city. See FAUBOURG.

Civil liberty is the greatest amount of absolute liberty which can in the nature of things be equally possessed by every citizen in a state.

The term is frequently used to denote the amount of absolute liberty which is actually enjoyed by the various citizens under the government and laws of the state as administered. 1 Bla. Com. 125.

The fullest political liberty furnishes the best possible guarantee for civil liberty.

Lieber defines civil liberty as guaranteed protection against interference with the interests and rights held dear and important by large classes of civilized men, or by all the members of a state, together with an effectual share in the making and administration of the laws, as the best apparatus to secure that protection, including Blackstone's divisions of civil and political under this head.

Natural liberty is the right which nature gives to all mankind of disposing of their persons and property after the manner they judge most consistent with their happiness, on condition of their acting within the limits of the law of nature and so as not to interfere with an equal exercise of the same rights by other men. Burlam. c. 3, § 15; 1 Bla. Com. 125. It is called by Lieber *social* liberty, and is defined as the protection or unrestrained action in as high a degree as the same claim of protection of each individual admits of.

Personal liberty consists in the power of locomotion, of changing situation, of removing one's person to whatever place one's inclination may direct, without imprisonment or restraint unless by due course of law. 1 Bla. Com. 134.

Political liberty is an effectual share in the making and administration of the laws. Lieber, Civ. Lib.

Liberty, in its widest sense, means the faculty of willing, and the power of doing what has been willed without influence from without. It means self-determination, unrestrainedness of action. Thus defined, one being only can be absolutely free,—namely, God. So soon as we apply the word liberty to spheres of human action, the term receives a relative meaning, because the power of man is limited; he is subject to constant influences from without. If the idea of unrestrainedness of action is applied to the social state of man, it receives a limitation still greater, since the equal claims of unrestrained action of all necessarily involves the idea of protection against interference by others. We thus come to the definition, that liberty of social man consists in the protection of unre-

strained action in as high a degree as the same claim of protection of each individual admits of, or in the most efficient protection of his rights, claims, interests, as man or citizen, or of his humanity, manifested as a social being. (See RIGHT.) The word liberty, applied to men in their political state, may be viewed with reference to the state as a whole, and in this case means the independence of the state, of other states (see AUTONOMY); or it may have reference to the relation of the citizen to the government, in which case it is called political or civil liberty; or it may have reference to the status of a man as a political being, contradistinguished from him who is not considered master over his own body, will, or labor—the slave. This is called personal liberty, which, as a matter of course, includes freedom from prison.

Lieber, in his work on Civil Liberty, calls that system which was evolved in England, and forms the basis of liberty in the countries settled by English people, Anglican liberty. The principal guarantees, according to him, are :—

1. National independence. There must be no foreign interference. The country must have the right and power of establishing the government it thinks best.

2. Individual liberty, and, as belonging to it, personal liberty, or the great habeas corpus principle, and the prohibition of general warrants of arrest. The right of bail belongs also to this head.

3. A well-secured penal trial, of which the most important is trial for high treason.

4. The freedom of communion, locomotion, and emigration.

5. Liberty of conscience. The United States constitution and the constitutions of all the states have provisions prohibiting any interference in matters of religion.

6. Protection of individual property, which requires unrestrained action in producing and exchanging, the prohibition of unfair monopolies, commercial freedom, and the guarantee that no property shall be taken except in the course of law, the principle that taxation shall only be with the consent of the tax-payer, and shall be levied for short periods only, and the exclusion of confiscation.

7. Supremacy of the law. The law must not, however, violate any superior law or civil principle, nor must it be an *ex post facto* law. The executive must not possess the power of declaring martial law, which is merely a suspension of all law. In extreme cases, parliament in England and congress in the United States can pass an act suspending the privilege of habeas corpus.

8. Every officer must be responsible to the person affected for the legality of his act; and no act must be done for which some one is not responsible.

9. It has been deemed necessary in the Bill of Rights and the American constitution specially to refer to the quartering of soldiers as a dangerous weapon in the hands of the executive.

10. The military forces must be strictly submitted to the law, and the citizen should have the right to bear arms.

11. The right of petitioning, and the right of meeting and considering public matters, and of organizing into associations for any lawful purposes, are important guarantees of civil liberty.

The following guarantees relate more especially to the government of a free country and the character of its polity :—

12. Publicity of public business in all its branches, whether legislative, judicial, written, or oral.

13. The supremacy of the law, or the protection against the absolutism of one, of several, or of the majority, requires other guarantees. It is necessary that the public funds be under close and efficient popular control; they should therefore be chiefly in the hands of the popular branch of the legislature, never of the executive. Appropriations should also be for distinct purposes and short times.

14. It is further necessary that the power of making war reside with the people, and not with the executive. A declaration of war in the United States is an act of Congress.

15. The supremacy of the law requires, also, not only the protection of the minority, but the protection of the majority against the rule of a factious minority or cabal.

16. The majority, and through it the people, are protected by the principle that the administration is founded on party principles.

17. A very important guarantee of liberty is the division of government into three distinct functions,—legislative, administrative, and judicial. The union of these is absolutism or despotism on the one hand, and slavery on the other.

18. As a general rule, the principle prevails in Anglican liberty that the executive may do what is positively allowed by fundamental or other law, and not all that which is not prohibited.

19. The supremacy of the law requires that, where enacted constitutions form the fundamental law, there be some authority which can pronounce whether the legislature itself has or has not transgressed it. This power must be vested in courts of law.

20. There is no guarantee of liberty more important and more peculiarly Anglican than the representative government. See Lieber, Civ. Lib. p. 168.

In connection with this, a very important question is, whether there should be direct elections by the people, or whether there should be double elections. The Anglican principle favors simple elections; and double elections have often been resorted to as the very means of avoiding the object of a representative government.

The management of the elections should also be in the hands of the voters, and government especially should not be allowed to interfere.

Representative bodies must be free. They must be freely chosen, and, when chosen, act under no threat or violence of the executive or any portion of the people. They must be protected as representative bodies; and a wise parliamentary law and usage should secure the rights of each member and the elaboration of the law.

A peculiar protection is afforded to members of the legislature in England and the United States by their freedom from arrest, except for certain specified crimes.

Every member must possess the right to propose any measure or resolution.

Not only must the legislature be the judge of the right each member has to his seat, but the whole internal management belongs to itself. It is indispensable that it possess the power and privileges to protect its own dignity.

The principle of two houses, or the bicameral system, is an equally efficient guarantee of liberty, by excluding impassioned legislation and embodying in the law the collective mind of the legislature.

21. The independence of the law, of which the independence of the judiciary forms a part, is one of the main stays of civil liberty. It requires "a living common law, a clear division of the judiciary from other powers, the public accusatorial process, the independence of the judge, the trial by jury, and an independent position of the advocate." See Lieber, Civil Liberty and Self-Government, 208–250.

22. Another constituent of our liberty is local and institutional self-government. It arises out of a willingness of the people to attend to their own affairs, and an unwillingness to permit of the interference of the executive and administration with them beyond what it necessarily must do, or which cannot or ought not to be done by self-action. A pervading self-government, in the Anglican sense, is organic; it consists in organs of combined self-action, in institutions, and in a systematic connection of these institutions. It is, therefore. equally opposed to a disintegration of society and to despotism.

American liberty belongs to the great division of Anglican liberty, and is founded upon the checks, guarantees, and self-government of the Anglican race. The following features are, however, peculiar to American liberty: republican federalism, strict separation of the state from the church, greater equality and acknowledgment of abstract rights in the citizen, and a more popular or democratic cast of the whole polity. With reference to the last two may be added these further characteristics:—

We have everywhere established voting by ballot. The executive has never possessed the power of dissolving or proroguing the legislature. The list of states has not been closed. We admit foreigners to the rights of citizenship, and we do not believe in inalienable allegiance.

There is no attainder of blood. We allow no *ex post facto* laws. American liberty possesses, also, as a characteristic, the enacted constitution,—distinguishing it from the English polity, with its accumulative constitution. Our legislatures are, therefore, not omnipotent, as the British Parliament theoretically is; but the laws enacted by them may be declared by the courts to conflict with the constitution.

The liberty sought for by the French, as a peculiar system, was founded chiefly, in theory, on the idea of equality and the abstract rights of man. (Rousseau's Social Contract.)

LIBERTY OF THE PRESS. The right to print and publish the truth, from good motives and for justifiable ends. 3 Johns. Cas. 394. The right freely to publish whatever the citizen may please, and to be protected against any responsibility for so doing, except so far as such publications, from their blasphemy, obscenity, or scandalous character, may be a public offence; or as by their falsehood and malice they may injuriously affect the standing, reputation, or pecuniary interests of individuals; Cooley, Const. Lim. c. xii. It is said to consist in this, "that neither courts of justice, nor any judges whatever, are authorized to take notice of writings *intended* for the press, but are confined to those which are actually printed." De Lolme, Const. 254.

At the common law, the liberty of the press was neither well protected nor well defined, and not until after many struggles was it so far recognized in England as to permit the publication of current news without the permission of government censors. This right is now, however, completely established, and comments on public legislation are not actionable so long as made in a fair spirit and justified by the circumstances; L. R. 4 Q. B. 73; May, Const. Hist. c. 7, 9, 10.

This right is secured by the constitution of the United States; Amendments, art. 1; and a provision of similar import has been embodied in each of the state constitutions; a constitutional principle is thereby established which forms a shield of protection to the free expression of opinion in every part of the United States. The abuse of the right is punished criminally by indictment, civilly by action for damages. See Cooper, Libel; Heard, Lib. & S.; LIBEL.

LIBERTY OF SPEECH. The right to speak facts and express opinions. Whart. Dict.

It is provided by the constitution of the United States that members of congress shall not be called to account for any thing said in debate; and similar provisions are contained in the constitutions of the several states in relation to the members of their respective legislatures. The right, however, does not extend beyond the mere speaking; for if a member of congress were to reduce his speech to writing and cause it to be printed, it would no longer bear a privileged character, and he might be held responsible for a libel, as any other individual. See Bacon, Abr. *Libel;* DEBATE.

The greatest latitude is allowed by the common law to counsel: in the discharge of his professional duty, he may use strong epithets, however derogatory to other persons they may be, if *pertinent* to the cause, and stated in his instructions, whether the thing were true or false. But if he were maliciously to travel out of his case for the purpose of slandering another, he would be liable to an action, and amenable to a just, and often more efficacious, punishment, inflicted by public opinion; 3 Chitty, Pr. 887. No respectable counsel will indulge himself with unjust severity; and it is doubtless the duty of the court to prevent any such abuse.

No action will lie against a witness at the suit of a party aggrieved by his false testimony, even though malice be charged; 50 N. Y. 309. The remedy against a dishonest witness is confined to the criminal prosecution for perjury; but false accusations, contained in affidavits or other proceedings by which a prosecution is commenced for supposed crime, render the party liable to action, if actual malice be averred and proven; 47 Cal. 624; Cooley, Const. Lim. 522.

LIBERUM MARITAGIUM (Lat.). **In Old English Law.** Frank-marriage (*q. v.*). 2 Bla. Com. 115; Littleton, § 17; Bract. fol. 21.

LIBERUM SERVITIUM. Free service. Service of a warlike sort by a feudatory tenant; sometimes called *servitium liberum armorum.* Somner, Gavelk. p. 56; Jacob, Law Dict.; 4 Co. 9.

Service not unbecoming the character of a freeman and a soldier to perform: as, to serve under the lord in his wars, to pay a sum of money, and the like. 2 Bla. Com. 60. The tenure of free service does not make a villein a free man, unless homage or manumission precede, any more than a tenure by villein services makes a freeman a villein. Bract. fol. 24.

LIBERUM TENEMENTUM. In Real Law. Freehold. Frank-tenement. 2 Bouv. Inst. n. 1690; 1 Washb. R. P. 46.

In Pleading. A plea in justification by the defendant in an action of trespass, by which he claims that he is the owner of the close described in the declaration, or that it is the freehold of some third person by whose command he entered. 2 Salk. 453; 7 Term, 355; 1 Wms. Saund. 299 *b*, note.

It has the effect of compelling the plaintiff to a new assignment, setting out the abuttals where he has the *locus in quo* only generally in his declaration; 11 East, 51, 72; 16 *id.* 343; 1 B. & C. 489; or to set forth tenancy in case he claims as tenant of the defendant, or the person ordering the trespass; 1 Saund. 299 *b*. It admits possession by the plaintiff, and the fact of the commission of a trespass as charged; 2 M'Cord, 226; see Greenl. Ev. § 626.

LICENCIADO. In Spanish Law. Lawyer or advocate. By a decree of the Spanish government of 6th November, 1843, it was declared that all persons who have obtained diplomas of "Licentiates in Jurisprudence" from any of the literary universities of Spain are entitled to practise in all the courts of Spain without first obtaining permission by the tribunals of justice.

Their title is furnished them by the minister of the interior, to whom the universities forward a list of those whom they think qualified.

This law does not apply to those already licensed, who may, however, obtain the benefit of it, upon surrendering their license and complying with certain other formalties prescribed by the law.

LICENSE (Lat. *licere*, to permit).

In Contracts. A permission. A right given by some competent authority to do an act which without such authority would be illegal.

An authority to do a particular act or series of acts on another's land without possessing any estate therein. 11 Mass. 533; 4 Sandf. Ch. 72; 1 Washb. R. P. *398.

The written evidence of the grant of such right.

An *executed license* exists when the licensed act has been done.

An *executory license* exists where the licensed act has not been performed.

An *express license* is one which is granted in direct terms.

An *implied license* is one which is presumed to have been given from the acts of the party authorized to give it.

It is distinguished from an *easement*, which implies an interest in the land to be affected, and a *lease*, or right to take the profits of land. It may be, however, and often is, coupled with a grant of some interest in the land itself, or right to take the profits; 1 Washb. R. P. *398.

A license may be by specialty; 2 Pars. Contr. 22; by parol; 13 M. & W. 838; 4 Maule & S. 562; 7 Barb. 4; 1 Washb. R. P. 148; or by implication from circumstances, as opening a door in response to a knock; Hob. 62; 2 Greenl. Ev. § 427.

It may be granted by the owner, or, in many cases, by a servant; Cro. Eliz. 246; 2 Greenl. Ev. § 427.

An executory license may be revoked at the pleasure of the grantor; 1 Washb. R. P. *398. In general, a mere license may be revoked at the grantor's pleasure: 11 Mass. 433; 15 Wend. 380; although the licensee has incurred expense; 10 Conn. 378; 23 *id.* 223; 3 Du. N. Y. 355; 11 Metc. 251; 2 Gray, 302; 24 N. H. 364; 13 *id.* 264; 4 Johns. 418; 3 Wisc. 117; 1 Dev. & B. 492; 13 M. & W. 838; 37 E. L. & Eq. 489; 5 B. & Ad. 1. But see 14 S. & R. 267. Not so a license closely coupled with a transfer of title to personal property; 8 Metc. 34; 11 Conn. 525; 13 M. & W. 856; 11 Ad. & E. 34.

An executed license which destroys an easement enjoyed by the licenser in the licensee's land, cannot be revoked; 9 Metc. 395; 2 Gray, 302; 2 Gill, 221; 3 Wisc. 124; 3 Du. N. Y. 255; 7 Bingh. 682; 3 B. & C. 332; 5 *id.* 221.

The effect of an executed license, though revoked, is to relieve or excuse the licensee from liability for acts done properly in pursuance thereof, and their consequences; 22 Barb. 336; 2 Gray, 302; 10 Conn. 378; 13 N. H. 264; 7 Taunt. 374; 5 B. & C. 221.

It has been held that a license, to the enjoyment of which it was necessary to expend money upon the licenser's land, could not be revoked, without reimbursing the licensee for the expenditures; 33 Ala. 600; 7 N. H. 237; and in Pennsylvania and some other states such a license is treated as irrevocable upon the ground of estoppel; 33 Penn. 169; 59 Ill. 337; 45 Ga. 33; but the current of authority is against this doctrine; 13 M. & W. 838; 38 Mo. 599; 12 Gray, 213. Courts of equity, however, will interfere to restrain the exercise of a legal right to revoke a license on the ground of preventing fraud, and construe the license as an agreement to give the right, and compel specific performance by deed; 4 C. E. Green, 153; 66 N. C. 546; 1 Washb. R. P. *400.

In International Law. Permission granted by a belligerent state to its own subjects, or to the subjects of the enemy, to carry on a trade interdicted by war. Wheat. Int. Law, 475.

Licenses operate as a dispensation of the rules of war, so far as its provisions extend. They are *stricti juris*, but are not to be construed with pedantic accuracy. Wheat. Int. Law, 476; 1 Kent, 163, n.; 4 C. Rob. 8. They can be granted only by the sovereign authority, or by those delegated for the purpose by special commission; 1 Dods. 226; Stew. Adm. 367. They constitute a ground of capture and confiscation *per se* by the adverse belligerent party; Wheat. Int. Law, 475.

In Patent Law. See PATENTS.

In Pleading. A plea of justification to an action of trespass, that the defendant was authorized by the owner of the freehold to commit the trespass complained of.

A license must be specially pleaded to an action of trespass; 2 Term, 166; but may be

given in evidence in an action on the case; 2 Mod. 6; 8 East, 308.

LICENTIA CONCORDANDI (Lat. leave to agree). One of the formal steps in the levying a fine. When an action is brought for the purpose of levying a fine, the defendant, knowing himself to be in the wrong, is supposed to make overtures of accommodation to the plaintiff, who accepts them, but, having given pledges to prosecute his suit, applies to the court, upon the return of the writ of covenant, for leave to make the matter up: this, which is readily granted, is called the *licentia concordandi*. 5 Co. 39; Cruise, Dig. tit. 35, c. 2, 22.

LICENTIA LOQUENDI. Imparlance.

LICENTIA SURGENDI. In Old English Law. Liberty of rising. A liberty or space of time given by the court to a tenant, who is essoined, *de malo lecti*, in a real action, to *arise* out of his bed. Also, the writ thereupon. If the demandant can show that the tenant was seen abroad before leave of court, and before being viewed by the knights appointed by the court for that purpose, such tenant shall be taken to be deceitfully essoined, and to have made default. Bract. lib. 5; Fleta, lib. 6, c. 10.

LICENTIA TRANSFRETANDI. A writ or warrant directed to the keeper of the port of Dover, or other seaport, commanding him to let the person who has this license of the king pass over sea. Reg. Orig. 93.

LICENTIOUSNESS. The doing what one pleases, without regard to the rights of others. It differs from liberty in this, that the latter is restrained by natural or positive law, and consists in doing whatever we please not inconsistent with the rights of others, whereas the former does not respect those rights. Wolff. Inst. § 84.

LICET (Lat.). It is lawful; not forbidden by law.

Id omne licitum est, quod non est legibus prohibitum, quamobrem, quod, lege permittente, fit, pœnam non meretur. Licere dicimus quod legibus, moribus, institutisque conceditur. Cic. Philip. 13; L. 42, D. ff. *de ritu nupt. Est aliquid quod non oporteat; tametsi licet; quicquod vero non licet certe non oportet.* L. *verbum oportere*, ff. *de verb. et rer. sign.*

Although. Calvinus, Lex. An averment that, "although such a thing is done or not done," is not implicative of the doing or not doing, but a direct averment of it. Plowd. 127.

LICET SÆPIUS REQUISITUS (although often requested). **In Pleading.** A formal allegation in a declaration that the defendant has been often requested to perform the acts the non-performance of which is complained of.

It is usually alleged in the declaration that the defendant, *licet sæpius requisitus*, etc., he did not perform the contract the violation of which is the foundation of the action. This allegation is generally sufficient when a request is not parcel of the contract. Indeed, in such cases it is unnecessary even to lay a general request; for the bringing of the suit is itself a sufficient request; 1 Saund. 33, n. 2; 2 *id.* 118, note 3; 2 H. Bla. 131; 1 Johns. Cas. 99, 319; 3 Maule & S. 150. See DEMAND.

LICITACION. In Spanish Law. The sale made at public auction by co-proprietors, or co-heirs, of their joint property which is not susceptible of being advantageously divided in kind.

LIDFORD LAW. See LYNCH LAW.

LIEGE (from *liga*, a bond, or *litis*, a man wholly at command of his lord. Blount). **In Feudal Law.** Bound by a feudal tenure; bound in allegiance to the lord paramount, who owned no superior.

The term was applied to the lord, or liege lord, to whom allegiance was due, since he was *bound* to protection and a just government, and also to the feudatory, liegeman, or subject bound to allegiance, for he was *bound* to tribute and due subjection. 34 & 35 Hen. VIII. So *lieges* are the king's subjects. Stat. 8 Hen. VI. c. 10; 14 Hen. VIII. c. 2. So in Scotland. Bell, Dict. But in ancient times private persons, as lords of manors, had their *lieges*. Jacob, Law Dict.; 1 Bla. Com. 367.

Liege, or *ligius*, was used in old records for full, pure, or perfect: *e.g. ligia potestas*, full and free power of disposal. Paroch. Antiq. 280. (Probably in this sense derived from legitima.) So in Scotland. See LIEGE POUSTIE.

LIEGE POUSTIE (*Legitima Potestas*). **In Scotch Law.** That state of health which gives a person full power to dispose of, mortis causâ or otherwise, his heritable property. Bell, Dict.

A deed executed at time of such state of health, as opposed to a death-bed conveyance. *Id.* A person is said to be in such state of health (in liege poustie, or in *legitima potestati*) when he is in his ordinary health and capacity, and not a minor, nor cognosced as an idiot or madman, nor under interdiction. 1 Bell, Com. 85; 6 Cl. & F. 540.

LIEN. A hold or claim which one person has upon the property of another as a security for some debt or charge.

In every case in which property, either real or personal, is charged with the payment of a debt or duty, every such charge may be denominated a lien on the property. Whittaker, Liens, p. 1. It differs from an estate in or title to the property, as it may be discharged at any time by payment of the sum for which the lien attaches. It differs from a mortgage in the fact that a mortgage is made and the property delivered, or otherwise, for the express purpose of security; while the lien attaches as incidental to the main purpose of the bailment, or, as in case of the lien of a judgment, by mere act of the law, without any act of the party. In this general sense the word is commonly used by English and American law writers to include those preferred or privileged claims given by statute or by admiralty law, and which seem to have been adopted from the civil law, as well as the security existing at common law, to which the term more exactly applies. In its more limited as well as commoner sense, the word lien indicates a mere right to hold the property of another as

security; or it is *the right* which one person possesses, in certain cases, of detaining property placed in his possession belonging to another, until some demand which the former has be satisfied. 2 East, 235. A qualified right which, in certain cases, may be exercised over the property of another. 6 East, 25, n. A lien is a right to hold. 2 Camp. 579. A lien in regard to personal property is a right to detain the property till some claim or charge is satisfied. Metc. Yelv. 67, n. *c*. The right of retaining or continuing possession till the price is paid. 1 Parsons, Mar. Law, 144.

Common Law Liens.
- Which exist by law.
  - By usage.
  - By express agreement.
  - Bailments of various kinds.
- Requisites to create.
- Waiver.

Civil Law Lien.
Equitable Liens.
Maritime Liens.
- Of shipper of goods.
- Of owner and charterer.
- Of master.
- Of seamen.
- Of material men.
- Collision.
- Ship's husband.

Statutory Liens.
Judgment Lien.
Mechanic's Lien.

The Common Law Lien. As distinguished from the other classes, it consists in a mere right to retain possession until the debt or charge is paid; 2 Story, 131; 24 Me. 214; 5 Ohio, 88; 10 Barb. 626; 43 Ill. 424.

In the case of a factor an apparent exception exists, as he is allowed a lien on the proceeds of goods sold, as well as on the goods themselves. But this seems to result from the relation of the parties and the purposes of the bailment; to effectuate which, and at the same time give a security to the factor, the law considers the possession, or right to possession, of the proceeds, the same thing as the possession of the goods themselves; 1 Wall. 166; 9 Bosw. 660; Story, Ag. § 111.

A particular lien is a right to retain the property of another on account of labor employed or money expended on that specific property.

A general lien is a right to retain the property of another on account of a general balance due from the owner; 3 B. & P. 494; 2 Hunt, 634.

Of course, where a general lien exists, a particular lien is included.

Particular liens constitute the oldest class of liens, and the one most favored by the common law; 4 Burr. 2221; Dougl. 97; 3 B. & P. 126. But courts ceased to originate liens at an early period; 9 East, 426; while general liens have been looked upon with jealousy, being considered encroachments upon the common law and founded solely in the usage of and for the benefit of trade; 3 B. & P. 42, 26, 494. Liens either exist by law, arise from usage, or are created by express agreement.

Liens which exist by the common law, generally arise in cases of bailment. Thus, a particular lien exists whenever goods are delivered to a handicraftsman of any sort for the execution of the purposes of his trade upon them; 1 Atk. 228; 3 Maule & S. 167; 14 Pick. 332; 7 Barb. 113; 8 Iowa, 207; 36 Me. 536; 2 W. & S. 392; 4 C. & P. 152. And so, where a person is, from the nature of his occupation, under a legal obligation to receive and be at trouble or expense about the personal property of another, in every such case he is entitled to a particular lien on it; 1 Esp. 109; 1 Ld. Raym. 654; 6 Term, 17; 3 B. & P. 42; 3 Vt. 245; 5 B. & Ald. 350.

And sometimes a lien arises where there is strictly no bailment. Thus, where a ship or goods at sea come into possession of a party by finding, and he has been at some trouble or expense about them, he is entitled to retain the same until reimbursed his expenses. This applies only to the salvors of a ship and cargo preserved from peril at sea; 1 Ld. Raym. 393; 5 Burr. 2732; 8 East, 57; 16 Penn. 393; Sprague, 57–272; Daveis, 20; Edw. Adm. 175; and, in the case of property on shore, where a specific reward is offered for the restoration; 8 Gill, 213; 3 Metc. Mass. 352; 52 Penn. 484; 7 Barb. 113; and does not apply, generally, it is said, to the preservation of things found upon land; 2 H. Blackst. 254; 2 W. Blackst. 1107; 7 Barb. 113; 4 Watts, 63; 10 Johns. 102; Story, Bailm. § 621, note a.

Liens which arise by usage are usually general liens, and the usage is said by Whitaker to be either the general usage of trade, or the particular usage of the parties; Whitaker, Liens, 31; 3 B. & P. 119; 4 Burr. 2222; 1 Atk. 228; Ambl. 252.

The usage must be so general that the party delivering the goods may be presumed to have known it, and to have made the right of lien a part of the contract; 4 C. & P. 152; 3 B. & P. 50. And it is said the lien must be for a general balance arising from transactions of a similar character between the parties, and that the debt must have accrued in the business of the party claiming the lien; Whitaker, Liens, 33; and see 1 Atk. 223; 1 W. Blackst. 651; and it seems that more decisive proof of general usage is required in those occupations in which the workmen are required to receive their employment when offered them, such as carriers; 6 Term, 14; 6 East, 519; 7 *id.* 224. But where a general lien has been once established, the courts will not allow it to be disturbed; 1 Esp. 109; 3 *id.* 31.

In regard to a general lien arising from particular usage between the parties, proof of their having before dealt upon the basis of such a lien will be presumptive evidence that they continue to deal upon the same terms; 1 Atk. 235; 6 Term, 19. If a debtor, who has already pledged property to secure a loan, borrow a further sum, it will be understood that the creditor's lien is for the whole debt; 2 Vern. 691.

Liens which arise from express agreement. A general or particular lien may be acquired in any case by the express agreement of the parties; Cro. Car. 271; 6 Term, 14. This generally happens when goods are placed in the hands of a person for the execution of some particular purpose upon them, with an express contract that they shall be considered as a pledge for the labor or expense which the execution of that purpose may occasion. Or it exists where property is merely pawned or delivered for bare custody to another, for the sole purpose of being a security for a loan made to the owner on the credit of it; Whitaker, Liens, 27; 2 Kent, 637. And if a number of tradesmen, not obliged by law to receive the goods of any one who offers, for the purposes of their trade, agree not to receive goods unless they may be held subject to a general lien for the balance due them, and the bailor knows this, and leaves the goods, the lien attaches. And the same is true, of course, of an individual under similar circumstances.

But where the tradesman is obliged to receive employment from any one who offers, a mere notice will not be enough to give this lien with implied assent, but *express* assent must be shown; 6 Term, 14; 3 B. & P. 42; 5 B. & Ald. 350.

Among the different classes who have liens by the common law, in the absence of any special agreement, are—

Innkeepers. They may detain a horse for his keep; 2 Ld. Raym. 866; 8 Mod. 173; 6 Term, 141; 9 Pick. 280, 316, 332; though, perhaps, not if the person leaving him be not a guest; 68 Me. 489; 11 Barb. N. Y. 41; but not sell him; F. Moore, 876; Bacon, Abr. *Inns* (D); 8 Mod. 173; 1 Holt, 383; 3 Gray, 382; Schoul. Bail. 294; except by custom of London and Exeter; F. Moore, 876; and cannot retake the horse or any other goods on which he has a lien, after giving them up; 8 Mod. 173; Hob. 42; Metc. Yelv. 67; L. R. 3 Q. B. Div. 484. These privileges do not extend to mere agisters or livery-stable keepers; 5 M. & W. 350; 6 C. B. 132; 78 N. C. 96; 7 Gray, 183; 35 Me. 153; 45 Iowa, 456. They may detain the goods of a traveller, but not of a boarder; 43 Vt. 30; 27 Wisc. 202; L. R. 7 Q. B. 711; 36 Iowa, 651; 8 Rich. So. C. 423. But there are statutes in force in many of the United States conferring on boarding-house keepers all the privileges of innkeepers; 43 N. H. 332; 42 Barb. 623; 27 Wisc. 406; 110 Mass. 158. This lien is a particular lien; 9 East, 433; Cro. Car. 271; 2 E. D. Smith, 195.

Warehousemen have a particular lien; 18 Ill. 286; 34 E. L. & Eq. 116; 31 Miss. 261; 1 Minn. 408; 13 Ark. 457.

Dyers and tailors have a particular lien; Cro. Car. 271; 9 East, 433; 6 East, 523; 4 Burr. 2214.

Common carriers, for transportation of goods; 2 Ld. Raym. 752; 6 East, 519; 7 *id.* 224; 1 Dougl. (Mich.) 1; Wright (Ohio), 216; 24 Me. 339; 5 Wall. 481; 25 Wisc. 241; 1 Minn. 301; 51 Ala. 512; 10 Wall. 15; 104 Mass. 156; but not if the goods are taken tortiously from the owner's possession, where the carrier is innocent; 1 Dougl. (Mich.) 1; 2 Hall, 561; 5 Cush. 137; 6 East, 519; 6 Whart. 418; 20 E. C. L. 426; nor if the carrier transport them for a mere hire; 107 Mass. 126. Part of the goods may be detained for the whole freight of goods belonging to the same person; 6 East, 622.

Bailees for hire, generally, for work done by them; 6 Term, 14; 3 Selw. N. P. 1163; 4 Term, 260; 26 Miss. 182; 4 Wend. 292; 40 N. H. 88; 86 Penn. 486. *A wharfinger;* 7 B. & C. 212; 43 N. Y. 554; 2 Gall. 483.

An agister of cattle has no lien; Cro. Car. 271; 7 Gray, 183; 35 Me. 153; nor a livery-stable keeper; 2 Ld. Raym. 866; 6 East, 509; 35 Me. 153. In some of the states, however, statutes have been passed conferring the right of lien in these cases.

Attorneys and *solicitors* have a lien upon papers of their clients; 12 Wend. 261; 2 Aik. 162; 14 Vt. 485; 11 N. H. 163; 11 Miss. 225; and also upon judgments obtained by them; 20 Pick. 259; 10 Barb. 67; 4 Sandf. 661; Wright, Ohio, 485; 30 Me. 152; 15 Vt. 544; not in Pennsylvania; 7 Penn. St. 376; see 52 How. Pr. 54; 27 N. H. 324; 15 Johns. 405; 3 Me. 34. This lien is subject to some restrictions; Metc. Yelv. 67 *f;* 24 Me. 20; 21 N. H. 339; 22 Pick. 210.

Clerks of courts have a lien on papers for their fees; 3 Atk. 727; 2 P. Wms. 460; 2 Ves. 111.

Bankers have a lien on all securities left with them by their employers; 5 Term, 488; 1 Esp. 66; 3 Gilm. 233; 1 How. 234; Whit. Liens, 39.

Factors and *brokers* have a lien on goods and papers; 3 Term, 119; 1 Johns. Cas. 437, n.; 8 Wheat. 268; 28 Vt. 118; 34 Me. 582; on part of the goods for the whole claim; 6 East, 622; 34 Me. 582; but only for such goods as come to them as factors; 11 E. L. & Eq. 528.

The *vendor of goods*, for the price so long as he retains possession; 7 East, 574; 1 H. Bla. 363; Hob. 41; 2 Bla. Com. 448; 2 Swan, 661; 6 McLean, 472; Story, Sales, § 282; 8 H. L. Cas. 338; 4 Keyes, 90; Benj. Sales, § 796.

Pawnees, from the very nature of their contract; 15 Mass. 408; 2 Vt. 309; 9 Wend. 345; 3 Mo. 219; 39 Me. 45; but only where the pawner has authority to make such pledge; 3 Atk. 44; 2 Camp. 336, n. A pledge, even where the pawnee is innocent, does not bind the owner, unless the pawner has authority to make the pledge; 1 Vern. 407; 2 Stark. 21; 1 Mas. 440; 2 Mass. 398; 4 Johns. 103; 1 Maule & S. 140; 17 C. B. 161; 20 How. 343; 98 Mass. 303; 57 Ga. 274. See, as to stock, 4 Allen, 272; 100 Mass. 382; 48 Cal.

99. The pawnee does not have a general lien; 15 Mass. 490; 28 Com. 420; 27 La. An. 110; 37 N. Y. 540.

Requisites as to Creation. In all these cases, to give rise to the lien, there must have been a delivery of the property; it must have come into the possession of the party claiming the lien, or his agent; 3 Term, 119; 6 East, 25, n.

A question may arise by whom the delivery is to be made. Where a person, in pursuance of the authority and directions of the owner of property, delivers it to a tradesman for the execution of the purposes of his trade upon it, the tradesman will not have a general lien against the owner for a balance due from the person delivering it, if he knew that the one delivering was not the real owner; 1 East, 335; 2 *id.* 523; 2 Campb. 218; 2 Atk. 114. Thus, a carrier, who, by the usage of trade, is to be paid by the consignor, has no lien for a general balance against the consignee; 5 B. & P. 64. Nor can a claim against the consignee destroy the consignor's right of stoppage in transitu; 3 B. & P. 42. But a particular lien may undoubtedly be derived through the acts of agents acting within the scope of their employment; 9 East, 233; 3 B. & P. 119; 3 Esp. 182. And the same would be true of a general lien against the owner for a balance due from him; Whit. Liens, 39.

No lien exists where the party claiming it acquires possession by wrong; 2 Term, 485; or by misrepresentation; 1 Campb. 12; or by his unauthorized and voluntary act; 1 Stra. 651; 8 Term, 310, 610; 2 H. Blackst. 254; 3 W. Blackst. 1117. But see 4 Burr. 2218.

No lien exists where the act of the servant or agent delivering the property is totally unauthorized, and the pledge of it is tortious against the owner, whether delivered as a pledge or for the execution of the purposes of a trade thereupon; 5 Ves. 111; 6 East, 17; 4 Esp. 174; 5 Term, 604. A pledge, even when the pawnee is innocent, does not bind the owner unless the pawner had authority; 1 Vern. 407; 2 Stark. 21; 1 Mas. 440; 2 Mass. 398; 4 Johns. 103.

A delivery by a debtor for the purpose of preferring a creditor will not be allowed to operate as a delivery sufficient for a lien to attach; 4 Burr. 2239; 3 Ves. 85; 2 Campb. 579; 11 East, 256.

Waiver of Leins. Possession is a necessary element of common-law liens; and if the creditor once knowingly parts with that possession after the lien attaches, the lien is gone; Stra. 556; 1 Atk. 254; 5 Ohio, 88; 6 East, 25, n.; 7 *id.* 5; 3 Term, 119; 2 Edw. Ch. 181; 5 Binn. 398; 3 Am. L. J. 128; 4 N. Y. 497; 4 Denio, 498; 42 Me. 50; 11 Cush. 231; 2 Swan, 561; 23 Vt. 217; Benj. Sales, § 799. But there may be a special agreement extending the lien, though not to affect third persons; 36 Wend. 467. The delivery may be constructive; Ambl. 252; and so may possession; 5 Ga. 153. A lien cannot be transferred; 8 Pick. 73; but property subject to a lien may be delivered to a third person, as to the creditor's servant, with notice of the lien, so as to preserve the lien of the original creditor; 2 East, 529; 7 *id.* 5. But it must not be delivered to the owner or his agent; 2 East, 529; 4 Johns. 103. But if the property be of a perishable nature, possession may be given to the owner under proper agreements; 1 Atk. 235; 8 Term, 199. Generally a delivery of part of the goods sold is not equivalent to a delivery of the whole, so as to destroy the vendor's lien. He may give up part and retain the rest, and then his lien will remain on the part retained for the price of the whole. But this is not so unless the intention to separate the goods delivered from the rest is manifest; Benj. Sales, § 805.

Neglect to insist upon a lien, in giving reasons for a refusal to deliver property on demand, has been held a waiver; 1 Campb. 410, n.; 7 Ind. 21; 13 Ark. 437.

Where there is a special agreement made, or act done, inconsistent with the existence of the lien, such as an agreement to give credit, or where a distinct security is taken, or the possession of the property is acquired for another distinct purpose, and for that only, or where the property is attached by the creditor, no lien arises; 16 Ves. 275; 4 Campb. 146; 2 Marsh. 339; 5 Maule & S. 180; Metc. Yelv. 67 *c*; 8 N. H. 441; 17 Pick. 140; 15 Mass. 389; 4 Vt. 549. But such agreement must be clearly inconsistent with the lien; 1 Dutch. 443; 32 Me. 319.

The only remedy or use of the lien at common law is to allow the creditor to retain possession of the goods; 33 Me. 438; 1 Mas. 319. And he may do this against assignees of the debtor; 1 Burr. 489.

The Civil Law Lien. The civil law embraces, under the head of mortgage and privilege, the peculiar securities which, in the common and maritime law, and equity, are termed liens.

In regard to privilege, Domat says, "We do not reckon in the number of privileges the preference which the creditor has on the movables that have been given him in a pawn, and which are in his custody. The privilege of a creditor is the distinguishing right which the nature of his credit gives him, and which makes him to be preferred before other creditors, even those who are prior in time, and who have mortgages." Domat, part 1, lib. iii. tit. i. sect. v.

These privileges were of two kinds: one gave a preference on all the goods, without any particular assignment on any one thing; the other secures to the creditors their security on certain things, and not on the other goods.

Among creditors who are privileged, there is no priority of time, but each one takes in the order of his privilege, and all creditors who have a privilege of the same kind take proportionately, although their debts be of

different dates. And all privileges have equally a preference over those of an inferior class, and over debts which do not have this favored character, whether subsequent or antecedent in point of time.

The vendor of immovable property, for which payment has not been made, is preferred before creditors of the purchaser, and all other persons, as to the thing sold. By the Roman law, this principle applies equally to movables and immovables; and the seller may seize upon the property in the hands of his vendee, or wherever he can find it.

So, too, a person who has lent money to repair a thing, or to make improvements, has this privilege. And this, though he lends to workmen or architects, etc., if it be done with the knowledge of the owner.

Carriers have a privilege not only for the price of carriage, but for money paid on account of the goods.

Landlords have a privilege for the rents due from their tenants even on the furniture of the under-tenants, if there be a sub-lease. But not if payment has been made to the tenant by an immediate lessor; although a payment made by the sub-tenant to the landlord would be good as against the tenant.

The privilege was lost by a novation, or by any thing in the original contract which showed that the vendor had taken some other security inconsistent with the privilege. See Domat, part i. lib. iii. tit. i. sec. v.

Mortgages in the civil law are of two kinds, conventional and legal. A conventional mortgage results from the direct act or covenant of the parties. A legal mortgage arises by mere act of law.

A mortgage may be acquired in three ways.

First, with the consent of the debtor, by his agreement.

Second, without the owner's consent, by the quality and bare effect of the engagement, the nature of which is such that the law has annexed to it the security of a mortgage.

Third, where a mortgage is acquired by the authority of justice: as where a creditor who had no mortgage obtains a decree of condemnation in his favor.

When the creditor is put into possession of the thing, movable or immovable, he has a right to keep it until he is paid what is owing him; and the debtor cannot turn the creditor out of possession, nor make use of his own thing without the consent of the creditor.

Effect of a Mortgage. First, the creditor has a right to sell the thing pledged, whether the creditor has it in his possession or not. Under the French law, it was a right to have it sold. Cushing's Domat, p. 647.

Second, a right on the part of the creditor to follow the property, into whosesoever hands it has come, whether movable or immovable.

Third, a preference of the first creditor to whom the property is mortgaged, and a right on his part to follow the property into the hands of the other creditors.

Fourth, the mortgage is a security for all the consequences of the original deb' as damages, interest, expenses in preserving, etc.

See, generally, Domat, part i. lib. iii. tit. i.; Guyot, Rep. Univ. tit. *Privilegium;* Cushing's Domat; Massi, Droit Commerciel.

Equitable Liens are such as exist in equity, and of which courts of equity alone take cognizance.

A lien is neither a *jus in re* nor a *jus ad rem;* it is not property in the thing, nor does it constitute a right of action for the thing. It more properly constitutes a charge upon the thing. In regard to these liens, it may be generally stated that they arise from constructive trusts. They are, therefore, wholly independent of the possession of the thing to which they are attached as an incumbrance; and they can be enforced only in courts of equity; Story, Eq. Jur. § 1215.

An equitable lien on a sale of realty is very different from a lien at law; for it operates after the possession has been changed, and is available by way of charge instead of detainer. Adams, Eq. Jur. 127.

The vendor of land has a lien for the unpaid purchase-money. The principle is stated, "where a conveyance is made prematurely before payment of the price, the money is a charge on the estate in the hands of the vendee;" 4 Kent, 151; Story, Eq. Jur. § 1217; 1 W. Blackst. 950; 15 Ves. 329; 2 Sugd. Vend. 671; 2 Dart, V. & P. 729; also 1 Whi. & T. Lead. Cas. 324; 1 Perry, Trusts, § 232; 1 Sch. & L. 132; 6 Johns. Ch. 402; 7 Wheat. 46; 17 Ves. 433; 10 Pet. 625; and in the hands of heirs or subsequent purchasers with notice; 15 Ves. 337; 3 Russ. 488; 1 Sch. & L. 135; against assignees in bankruptcy, under a general assignment; Bump, Bankr.; 2 B. R. 183; 1 Bro. Ch. 420; 9 Ves. 100; 2 V. & B. 306; 1 Vern. 267; 1 Madd. 356; and whether the estate is actually conveyed or only contracted to be conveyed; Sugd. Vend. c. 12, p. 541; 2 Dick. Ch. 730; 12 Ad. & E. 632.

So, too, where money has been paid prematurely before conveyance made, the purchaser and his representatives have a lien; 3 Y. & J. 264; 11 Price, 58; 1 P. Wms. 278.

So where the purchase-money has been deposited in the hands of a third person, to cover incumbrances; 1 T. & R. 469; 1 Ves. 478. Yet a lien will not be created for a third party, who was to receive an annuity under a covenant as a part of the consideration for the conveyance; 3 Sim. 499; 1 M. & K. 297; 2 Keen, 81.

The deposit of the title-deeds of an estate gives an equitable lien on the estate; 4 Bro. C. C. 269; s. c. 1 Lead. Cas. Eq. 931; L. R. 3 P. C. C. 299; without any express agreement either by parol or in writing. But not when the circumstances of the deposit were such as to show that no such lien was intended; 36 Beav. 27. This equitable lien has been recognized in 2 Sandf. Ch. 9; 2 Hill, Ch. 166; 12 Wisc. 413; 10 Sm. & M. 418; but denied in 2 Disn. 9; 1 Rawle,

325. See 8 B. Monr. 435. This lien is not favored, and is confined strictly to an actual, immediate, and *bonâ fide* deposit of the title-deeds with the creditor, as a security, in order to create the lien; 12 Ves. 197; Story, Eq. Jur. § 1020; 4 Kent, 150.

It is a general principle that if one party has a lien on two funds for a debt, and another party has a lien on one only of the funds for another debt, the latter has a right in equity to compel the former to resort to the other fund in the first instance for satisfaction; 8 Ves. 388; 1 Johns. Ch. 318; 1 Story, Eq. § 633.

When there is a lien upon different parcels of land for the payment of the same debt, and some of these lands still belong to the person who ought to pay the debt, and other parcels have been transferred by him to third persons, his part of the land as between them and him is primarily chargeable with the debt; and it has been further held that if he has sold or transferred different parcels at different times to different persons, as encumbrancers or purchasers, there or between themselves, they are to be charged with the lien in the reverse order of time of the transfers to them; 5 Johns. Ch. 440; 1 Penn. 275; but see *contra*, 2 Story, Eq. Jur. § 1233.

One joint tenant has, in many cases, a lien on the common estate for repairs put on by himself above his share of the liability; 1 Ball & B. 199; Story, Eq. Jur. § 1236; Sugd. Vend. 611.

And equity applies this principle even to cases where tenant for life makes permanent improvements in good faith; 1 Sim. & S. 552. So where a party has made improvements under a defective title; 6 Madd. 2; 9 Mod. 11.

So, too, there is a lien where property is conveyed *inter vivos*, or is bequeathed or devised by last will and testament, subject to a charge for the payment of debts; or to other charges in favor of third persons; Story, Eq. Jur. § 1244. A distinction must be kept in mind between a devise in trust to pay certain sums, and a devise subject to charges.

A covenant to convey and settle lands does not give the covenantee a lien; but was held to do so in case of a covenant to settle lands in lieu of dower; 3 Bro. Ch. 489; 1 Ves. 451; 1 Madd. Ch. Pr. 471.

Waiver. The lien may be waived by agreement; but postponement of the day of payment is not a waiver, not being inconsistent with the nature of the lien; nor taking personal security; Adams, Eq. Jur. 128; 1 Johns. Ch. 308; 2 Rand. 428; 2 Humphr. 248; 1 Mas. 192; 2 Ohio, 383; 1 Blackf. 246; 6 B. Monr. 174; 6 Yerg. 50; 3 Ga. 333; 1 Ball & B. 514; 15 Ves. 348. An acknowledgment of the payment of the purchase-money in the body of the deed, or by a receipt, will not operate as a waiver or discharge of the vendor's lien if the purchase-money has not in fact been paid; 30 N. J. Eq. 569; 50 Ala. 228; 29 Ark. 357. Taking the note or other personal security of the vendee payable at a future day is generally held merely a means of payment, and not a security destroying the lien; 1 Sch. & L. 135; 2 V. & B. 306; 1 Madd. 349; 2 Rose, 79; 2 Ball & B. 514; 12 W. Va. 575; 50 Ala. 34; 26 N. J. Eq. 311; 44 Miss. 508; 20 N. J. Eq. 109; 25 Ark. 510; 21 Vt. 271; 1 Johns. Ch. 308. But if it be the note of a third party, or an independent security on real estate, it would generally be a waiver; Story, Eq. Jur. § 1223, n.; 4 Kent, 151; 4 Wheat. 290; 1 Paige, Ch. 20; 9 Cow. 316; 1 Mas. 212; 4 Mo. App. 292; 67 Ill. 599; 10 R. I. 334; 10 Heisk. 477; 49 Mo. 64; 43 Miss. 570; 46 Texas, 204; 30 Md. 422; 4 Wheat. 255; 20 Ohio, 546; 15 Ind. 435; 16 N. H. 592; 17 Cal. 70; 2 Mich. 243; 4 N. Y. 312; 66 Mo. 44. And, generally, the question of relinquishment will turn upon the facts of each case; 6 Ves. 752; 15 *id.* 329; 3 Russ. Ch. 488; 3 Sugd. Vend. c. 18; 8 J. J. Marsh. 553.

Maritime Liens. Maritime liens do not include or require possession. The word lien is used in maritime law, not in the strict legal sense in which we understand it in courts of common law, in which case there could be no lien where there was no possession, actual or constructive; but to express, as if by analogy, the nature of claims which neither presuppose nor originate in possession; 22 E. L. & Eq. 62. See 15 Bost. Law Rep. 555; 16 *id.* 1, 264; 17 *id.* 93, 421. A distinction is made in the United States between qualified maritime liens, which depend upon possession, and absolute maritime liens, which do not require nor depend upon possession; 7 How. 729; 21 Am. Law Reg. 1.

The shipper of goods has a lien upon the ship, for the value of the goods sent, which can be enforced in admiralty; 1 Blatchf. & H. 300; Olcott, 43; 1 Blatchf. 173; Ware, 188, 322; Daveis, 172; 22 How. 491; Crabbe, 534; 3 Blatchf. 271, 289; 1 Sumn. 551; and, generally, every act of the master binds the vessel, if it be done within the scope of his authority; 2 Pars. Sh. & Ad. 7; 17 Me. 147; 1 W. Rob. 392; 2 E. L. & Eq. 536; 18 How. 182; where the possession of the master is not tortious, but under a color of right; 6 McLean, 484. This does not apply to contracts of material men with the master of a domestic ship; 1 Conkl. Adm. 73; and the act must have been within the scope of the master's employment; 18 How. 182. See 1 C. Rob. 84. This lien follows the ship even in the hands of a purchaser, without notice before the creditor has had a reasonable opportunity to enforce his lien; Ware, 188. If the master borrow money for the ship's necessity, the lender has a lien on the ship for the amount; 4 Dall. 225; 8 Me. 298. A sale of the vessel by the master through necessity cuts off the lien of the shipper of the cargo in the vessel; 6 Wall. 18.

The owner of a ship has a lien on the cargo carried for the freight earned, whether reserved by a bill of lading or not; 12 Mod.

447; 4 B. & Ald. 630; 2 B. & B. 410; 6 Pick. 248; 18 Johns. N. Y. 157; 5 Sandf. N. Y. 97; 5 Ohio, 88; 4 Wash. C. C. 110; 8 Wheat. 605; Ware, 149; 1 Sumn. 551; 2 W. & M. 178.

This lien is, at most, only a qualified maritime lien; see 1 Pars. Mar. Law, 174, n. The lien exists in case of a chartered ship; 4 Cow. 470; 1 Paine, 358; 4 B. & Ald. 630; 20 Bost. L. Rep. 669; 8 Wheat. 605; to the extent of the freight due under the bill of lading; 2 Atk. 621; 1 B. & Ald. 711; 4 *id.* 630; 1 Sumn. 551. But if the charterer takes possession and management of the ship, he has the lien; 1 Cowp. 143; 8 Cra. 39; 6 Pick. 248; 4 Cow. 470; Ware, 149; 4 M. & G. 502. No lien for freight attaches before the ship has broken ground; 1 B. & P. 634; 5 Binn. 392; 3 Gray, 92. But see, as to the damages for removing goods from the ship before she sails, 28 E. L. & Eq. 210; 1 C. B. 328; 2 C. & P. 334; 19 Bost. L. Rep. 579; 2 Gray, 92.

No lien exists for dead freight; 15 East, 547; 3 Maule & S. 205. The lien attaches only for freight earned; 3 Maule & S. 205; Ware, 149; 2 Brev. 233. The lien is lost by a delivery of the goods; 6 Hill, 43; but not if the delivery be involuntary or procured by fraud; *id.* So it is by stipulations inconsistent with its exercise; 17 How. 53; 10 Conn. 104; 6 Pick. 248; 4 B. & Ald. 50; 32 E. L. & Eq. 210: as, by an agreement to receive the freight at a day subsequent to the entire delivery of the goods,—a distinction being, however, taken between the unloading or arrival of the ship, and the delivery of the goods; 1 Sumn. 551; 18 Johns. 157; 14 M. & W. Exch. 794; 2 Sumn. 589; 10 Mass. 510.

A third person cannot take advantage of the existence of such lien; 3 East, 85 A vendor, before exercising the right of stoppage in transitu, must discharge this lien by payment of freight; 1 Pars. Mar. L. 495; 15 Me. 314; 3 B. & P. 42.

Master's Lien. In England, the master has no lien, at common law, on the ship for wages, nor disbursements; 33 E. L. & Eq. 600; 1 B. & Ald. 575; 5 D. & R. 552; 6 How. 112.

But now, by the one-hundred-and-ninety-first section of the English Merchant Shipping Act of 1854, it is provided that "Every master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the amount of his wages, which, by this act, or any law or custom, any seaman, not being a master, has for the money of his wages." And it has been properly held by Judge Sprague, of the United States district court, that this lien of the master on an English vessel may be reinforced in the admiralty courts of the United States; 22 Bost. L. Rep. 150. See 9 Wall. 435; 3 Fed. Rep. 577; 7 *id.* 247, 674.

In the United States, he has no lien for his wages; 2 Paine, 201; 1 Pet. Adm. 223; 11 *id.* 175; 3 Mas. 91; 14 Penn. 34; 18 Pick. 530. This does not apply to one not master in fact; Bee, 198. As to lien for disbursements, see 2 Curt. C. C. 427; 14 Penn. 34; 11 Pet. 175. He may be substituted if he discharge a lien; 1 Pet. Adm. 223; Bee, 116; 3 Mas. 255. But he has a lien on the freight for disbursements; 4 Mass. 91; 11 *id.* 72; 5 Wend. 315; 2 Pars. Sh. & Ad. 25, n.; for wages in a peculiar case; Ware, 149; and on the cargo, where it belongs to the shipowners; 14 Me. 180. He may, therefore, detain goods against the shipper or consignee, even after payment to owner, if the master give reasonable notice; 11 Mass. 72; 5 Wend. 315; 4 Esp. 22. But see 5 D. & R. 552. The master may retain goods till a contribution bond is signed; 11 Johns. 23; 11 Me. 150; 13 *id.* 357.

The seamen's lien for wages attaches to the ship and freight, and the proceeds of both, and follows them into whosesoever hands they come; 2 Sumn. 443; 2 Par. Mar. L. 60; and lies against a part, or the whole, of the fund; 3 Sumn. 50, 286; but not the cargo; 5 Pet. 675. It applies to proceeds of a vessel sold under attachment of a state court; 2 Wall. C. C. 592; overruling 1 Newb. 215.

This lien of a seaman is of the nature of the *privilegium* of the civil law, does not depend upon possession, and takes precedence of a bottomry bond or hypothecation; 2 Pars. Mar. Law, 62, and cases cited; 15 Bost. L. Rep. 555; 16 *id.* 264; Ware, 134. Taking the master's order does not destroy the lien; Ware, 185. And see 2 Hagg. Adm. 136. Fishermen on shares have it, by statute. Generally, all persons serving in a way directly and materially useful to the navigation of the vessel; Gilp. 505; 3 Hagg. Adm. 376; 2 Pet. Adm. 268; Ware, 83; 1 Blatchf. & H. 423; 1 Sumn. 384; 1 Ld. Raym. 397. A woman has it if she performs seaman's service; 1 Hagg. Adm. 187; 18 Bost. L. Rep. 672; 1 Newb. 5. It lies against ships owned by private persons, but not against government ships employed in the public service; 9 Wheat. 409; 3 Sumn. 308.

A ship broker, who obtains a crew, has been held to have a lien for his services and advances for their wages; 1 Blatchf. & H. 189. One who performs towage service on the navigable waters of the United States acquires a lien, which may be enforced by proceedings *in rem*, and cannot be destroyed by the sale of the vessel under a state law; 9 Fed. Rep. 777.

Stevedores have no lien; Olcott, 120; 1 Wall. Jr. 370.

Material men have a lien by admiralty law. They are those whose trade it is to build, repair, or equip ships, or to furnish them with tackle and provisions necessary in any kind; 3 Hagg. Adm. 129. In regard to foreign ships, it has been held that material men have a lien on the ship only when the supplies were necessary and could be obtained only on the credit of the ship; 19 How. 359;

13 Wall. 329. The lien for repairs continues only as long as they retain possession, on domestic ships; Wright, Ohio, 660; 4 Wheat. 438; 1 Stor. 68; and is gone if possession is left; 14 Conn. 404; 4 Wheat. 438; 4 Wash. C. C. 453. And see *supra*.

The several states of the United States are foreign to each other in this respect. Where repairs are made at the home port of the owner, the maritime law of the United States gives no maritime lien, the rights of the parties being altogether governed by the local law. The liens given by the state laws have, however, been enforced by the federal courts, not as rights which they were bound to enforce, but as discretionary powers which they might lawfully exercise, when the controversies were within the admiralty jurisdiction; 1 Black, 522; 21 Wall. 558; 95 U. S. 69; 1 Fed. Rep. 218; 2 *id.* 364; 8 *id.* 366. The state legislatures cannot create a maritime lien, nor can they confer jurisdiction upon a state court to enforce such a lien by a proceeding *in rem*; but they can authorize their enforcement by common law remedies; 4 Wall. 430, 571; 16 *id.* 534; 9 Am. L. Rev. 638; 2 Pars. Shipp. & Ad. 157; 24 Iowa, 192; Field & M. Fed. Pr. 561; 43 N. Y. 554; 21 Am. L. Reg. N. S. 88; 16 Am. L. Rev. 193.

As to the order of precedence of these liens, see Daveis, 199; Ware, 565; 2 Curt. C. C. 421; 8 Fed. Rep. 331, 833.

Giving credit will not be a waiver of a lien on a foreign ship, unless so given as to be inconsistent with the exercise of the lien; 7 Pet. 324; 1 Sumn. 73; 5 Sandf. 342; 4 Ben. 151.

Builders' liens may be placed on the common-law ground that a workman employing skill and labor on an article has a lien upon it; 2 Rose, 91; 4 B. & Ald. 341; Wright, Ohio, 660; 4 Wheat. 438; 1 Stor. 68; and a lien for the purpose of finishing the ship, where payments are made by instalments; 1 Pars. Shipp. & Ad. 64 n.; 5 B. & Ald. 942.

Collision. In case of collision the injured vessel has a lien upon the one in fault for the damage done; 22 E. L. & Eq. 62; Crabb, 580; and the lien lasts a reasonable time; 18 Bost. L. Rep. 91; 1 Pars. Shipp. & Ad. 531.

A *part-owner*, merely as such, has no lien whatever, but acquires such a lien when any of the elements of partnership or agency, with bailment upon which his lien may rest, enter into his relation with the other part-owners; 1 Pars. Sh. & Ad. 115.

A part-owner who has advanced more than his share towards building a vessel has no lien on her for such surplus; 6 Pick. Mass. 46; and none, it is said, for advances on account of a voyage; 4 Pick. 456; 7 Bingh. 709.

That the relation of partners must exist to give the lien; 20 Johns. 61; 4 B. Monr. 458; 8 B. & C. 612; Gilp. 467; 4 Johns. Ch. 522; 6 Pick. 120; 5 Mann. & R. 25.

And part-owners of a ship may become partners for a particular venture; 1 Ves. Sr. 497; 3 W. & M. 193; 10 Mo. 701; 9 Pick. 334. But see 14 Penn. 34.

The ship's husband, if a partner, has a partner's lien; if not, he may have a lien on the proceeds of the voyage; 8 B. & C. 612; 16 Conn. 12, 23; 3 W. & M. 193; or of the ship herself, if sold, or on her documents, if any of these have come into his actual possession. And the lien applies to all disbursements and liabilities for the ship. But it is doubtful if his mere office gives him a lien; 1 Pars. Mar. Law, 113; 2 Curt. C. C. 427; 2 V. & B. 242; Cowp. 469.

Deposit of a bill of lading gives a lien for the amount advanced on the strength of the security; 5 Taunt. 558; 2 Wash. C. C. 283; B. & L. Adm. 38.

These liens of part-owners and by deposit of a bill of lading are not maritime liens, however, and could not be enforced in admiralty. See COLLISION; SEAMEN'S WAGES; MARSHALLING OF ASSETS; MASTER; CAPTAIN; PRIVILEGE.

Statutory Lien. Under this head it is convenient to consider some of those liens which subsist at common law, but have been extensively modified by statutory regulations, as well as those which subsist entirely by force of statutory regulations.

The principal liens of this class are judgment liens, and liens of material men and builders.

Judgment Lien. At common law, a judgment is merely a general security and not a specific lien on land; 2 Sugd. Vend. *517; but by stat. 1 & 2 Vict. c. 110, it is made a charge upon all lands, tenements, etc., of which the debtor is owner or in which he is in any way interested, and it binds all persons claiming under him after such judgment, including his issue, and other persons whom he could bar; *id.* *523. And now by stat. 27 & 28 Vict. c. 112, judgments are not liens upon lands until such lands have been actually delivered in execution.

In Alabama. Judgments are not liens; 57 Ala. 448. It requires an execution in the hands of the sheriff to create a lien either on real or personal property; 58 Ala. 577; 59 *id.* 625.

In Arizona. Judgments are liens on real property, and attach to after-acquired property, binding for two years after being docketed; Comp. Laws, 440, § 209.

In Arkansas. The lien attaches to real estate situate in the county in which the court is held. It begins from the delivering of execution to the officer; 12 Ark. 421; 18 *id.* 414; and binds after-acquired lands; 13 Ark. 74. The limitation is ten years; Gantt's Dig. ch. 79, § 3603; 26 Ark. 352; 33 Ark. 378.

In California. The lien attaches immediately upon the judgment being docketed, and binds all lands of the debtor including those after acquired for two years; C. C. P. § 671; 37 Cal. 131. The perfecting of an appeal does not discharge the lien; 25 Cal. 337.

In Colorado. The lien attaches to real estate when an abstract of the judgment certified by the clerk of court is filed in the county where the real estate is situated, and binds for seven years from the last day of the term when rendered; Col. Laws, ch. 48; 1 Col. 84.

In Connecticut. Judgments are not liens unless made so by being recorded against particular real estate; Gen. Stat. tit. 1, § 24; 17 Conn. 278.

In Dakota. The lien of a judgment attaches to all real estate, excepting homesteads, as soon as it is docketed, and lasts for five years; C. C. P. § 300.

In Delaware. The lien attaches immediately upon entering of the judgment. The limitation is twenty years; Del. Laws, ch. 110.

In District of Columbia. Judgments are liens on real estate, but not on equitable interests, from the date of rendition, and on personal property for twelve years; R. S. D. C. 265.

In Florida. Judgments are liens upon real estate in the county where rendered, and may be made in other counties by filing a transcript there; McClellan, Dig. 618; 12 Fla. 633.

In Georgia. Domestic judgments are a lien from their date upon both real and personal property for seven years, and may be revived for three years additional; Code, § 2913, 2914; foreign judgments bind for five years; 42 Ga. 212, 218.

In Idaho. The lien of a judgment begins from the time it is docketed, and binds all the property of the debtor not exempt for two years; Rev. Laws, 1874–75, § 225.

In Illinois. When execution is not issued on a judgment within one year from the time of rendition, it ceases to be a lien, but execution may issue at any time within seven years, and becomes a lien immediately upon delivery to the sheriff; R. S. ch. 77; 84 Ill. 557.

In Indiana. Judgments of the supreme, circuit, and superior courts are a lien upon all real estate in the county where rendered for ten years, and may be made so in other counties by filing a transcript; 2 Ind. Stat. § 264, p. 527; 9 Ind. 92; 73 Ind. 235.

In Iowa. Judgments of the supreme, district, and circuit courts are liens on real estate, owned or after acquired for ten years from the date of the judgment, including equitable as well as legal; Stat. ch. 9; 40 Ia. 425.

In Kansas. For five years, and may be continued by revival; Com. Laws, § 3972; 5 Kan. 280; 13 *id.* 53.

In Kentucky. Judgments are liens upon the real estate from the time the writ of *fieri facias* is delivered to the officers for execution; 1 Gen. Stat. 417; 1 B. Mon. 109.

In Louisiana. Judgments recorded in the office of the parish recorder operate as mortgages upon all real estate from the date of record; Civ. Code, § 3189.

In Maine. Except under an attachment on mesne process for thirty days, judgments are not a lien; R. S. ch. 81, § 64.

In Maryland. The lien of a judgment lasts for twelve years; Rev. Code, art. 64, § 135; 18 Md. 504; 37 *id.* 443.

In Massachusetts. Judgments do not constitute a lien. All attachments on mesne process continue in force for thirty days after judgment; Mass. Stat. 625.

In Michigan. Judgments have no effect on the debtor's property until execution has been issued and levy made; 2 Comp. Laws, 1871, ch. 165.

In Minnesota. Judgments are a lien upon all real estate in the county where rendered, either owned or after-acquired for ten years; R. S. ch. 66; 10 Minn. 303.

In Mississippi. When enrolled in the office of the clerk of the circuit court, judgments become liens and bind the property within the county where rendered; Miss. Rev. Code, § 830.

In Missouri. Judgments of courts of record are liens upon all present and after-acquired real estate in the county where rendered for three years, and may be made so in other counties by filing a transcript. Liens may be revived by *scire facias* for two years; Mo. Code, § 2729; 67 Mo. 201.

In Montana. From the time of docketing, judgments become a lien upon all real property owned or after acquired in the county where rendered for six years; Code C. P. § 295.

In Nebraska. Judgments in the district court are liens upon the lands of the debtor in the county where rendered from the first day of the term, but judgments by confession, and those rendered at the same time the action was commenced, bind only from the day when rendered; Comp. Stat. § 477. By filing a transcript in the district court of another county, a judgment may be made a lien there; Comp. Stat. § 429.

In Nevada. Judgments are liens for two years from the time of docketing, and may be made so in other counties by filing a transcript; 1 Comp. Laws, § 1267; 1 Nev. 398.

In New Hampshire. Judgments are not liens; as to attachments, see Gen. Laws, 517.

In New Jersey. Judgments are liens from the date of actual entry for twenty years; N. J. Rev. Stat. 520; 1 Zabr. 714, 751; 2 Vroom, 171.

In New Mexico. Judgments are liens on the real estate in the county where docketed, and may be made so in other counties by filing a transcript; Gen. Laws.

In New York. A judgment of a court of record or justice's court exceeding $25 is a lien on real estate for ten years from the time of docketing; Code, § 1251; 50 N. Y. 655; 6 Barb. 470.

In North Carolina. Judgments of the superior court are liens upon real property, except homesteads, for ten years, from the time of docketing. Transcripts may be filed and thus become liens in other counties; Battle's Rev. ch. 17, § 259; 71 N. C. 135.

In Ohio. Lands and tenements are bound by the lien of a judgment in the county where rendered for five years from the first day of the term; R. S. 5375. The lien then becomes dormant, but may be revived by *scire facias* at any time within twenty-one years; R. S. 5368.

In Oregon. Judgments are liens upon real estate within the county, whether owned or after acquired, for ten years; Code, § 267.

In Pennsylvania. Judgments bind all the real estate in the county where rendered for five years, and may be continued by revival; but are not liens on after-acquired real estate unless revived, and after-acquired real estate can be reached by execution. A verdict for a specific sum is also a lien; 1 Purd. Dig. § 18; Act of March 23, 1877.

In Rhode Island. A judgment is not a lien; Gen. Stats. ch. 145, § 15.

In South Carolina. Judgments are made a lien on lands by the acts of 1873–74, for a period of ten years from the date of entry.

In Tennessee. Judgments are liens, if rendered in the county where the defendant resides, against all his real estate wherever situate, for twelve months; but, in counties of 4000 or more inhabitants, they become liens only from the date of filing an abstract of the judgment in the register's office of the county where the land is situated, unless actual notice of judgment has been given; Ten. Stat. § 2980. The lien extends to after-acquired lands; 13 Humphr. 177.

In Texas. Judgments are liens for ten years from the date of record.

In Utah. Judgments are liens upon all real property for two years from the time of docketing.

To bind land in other counties, a transcript must be filed. After five years, liens cannot be revived by *scire facias;* Comp. Laws, 45.

In Vermont. Judgments are not liens.

In Virginia. Judgments are liens for one year, and can be revived by *scire facias* within ten years from time of docketing; Code, 1166; 21 Gratt. 112.

In Washington. Judgments become liens for five years upon land situated within the county from the time a transcript is filed in the county auditor's office; Stat. § 325.

In West Virginia. Judgments are liens for ten years from the time they are docketed; R. S. ch. 163, § 5.

In Wisconsin. Judgments of the circuit court become a lien on all real estate within the county for ten years from the time of docketing, and bind real estate in other counties when a transcript is filed; R. S. ch. 128, § 2901.

In Wyoming. Judgments constitute a lien from the first day of the term when rendered; they become dormant in five years and cease to be liens; Comp. Laws, tit. xiv. § 427.

Judgments rendered in the federal courts have the same lien as those rendered in the courts of the respective states wherein they are held. Judgments in the circuit court for the eastern district of Pennsylvania have been decided to be liens against land in both the eastern and western districts of Pennsylvania.

Mechanics' Liens.

The lien of mechanics and material men on buildings and for work done and materials furnished is unknown either at common law or in equity; 13 Penn. 167; 6 Wall. 561; but it exists in all of the United States by statute, to a greater or less extent. Each state has its own mechanics' lien law, differing often in minor particulars, but alike in their general provisions. In most of the states, this lien is equal to that of a judgment or mortgage, and can be assigned and enforced in a similar manner; 26 Conn. 317. The lien affects only real estate, and attaches to the materials only when they become real estate by being erected into a building and attached to the land; 2 Vroom, 477; but should the building be removed or destroyed, the lien does not remain upon the land; 26 Penn. 246; nor upon any portion of the materials of which the building was composed; 28 Penn. 161.

The benefits of the statute apply only to the class of persons named therein. The contractor seems to be universally secured by the lien, and in most of the states the sub-contractor and material man are also protected either by a lien or a right of action against the owner of the land. In some states these provisions extend to workmen, but generally they do not; Phill. Mech. Liens, 53. Mechanics' lien laws extend to non-residents as well as residents; 2 Swan, 130; 17 Minn. 353; where the statute was silent on the subject of assigning a mechanic's lien, it was held that an assignee could not prosecute in his own name and avail himself of its privileges; 10 Wisc. 331; 36 Me. 384; but in other states it has been held that the lien may be assigned precisely as any other *chose in action*, the assignee taking subject to the equities of the parties; 15 Gratt. 83; 12 Penn. 339; 14 All. 139; 14 Abb. Pr. N. S. 281. The right of lien survives to an executor or administrator; 14 Minn. 145.

A lien cannot be acquired against certain classes of property which are exempted on the ground of public policy. Thus public school-houses; 37 How. Pr. 520; 10 Penn. 275; court-houses, public offices, or jails, are exempt; 7 W. & S. 197; 47 N. Y. 666. So also are graveyards; 3 Penn. L. J. 343. Railroad depots are not exempt; 11 Wisc. 214; 10 Ohio St. 372; 37 N. H. 410. On the foreclosure of a mortgage surplus moneys take the place of the land and are subject to a lien; 17 Abb. Pr. 256; so also is a balance in court on sale of a lessee's interest in land and buildings; 62 Penn. 405. See, generally, Phillips, Mechanics' Liens.

Remedy is by *scire facias*, in some states; 14 Ark. 370; 1 Dutch. 317; 14 Tex. 37; 22 Mo. 140; 3 Md. Ch. Dec. 186; 14 How. 434; 12 Penn. 45; by petition, in others; 11 Cush. 308; 4 Wisc. 451; 14 Ala. N. S. 33; 11 Ill. 519; 1 Iowa, 75. Judgment, when obtained, has the effect of a common-law judgment; 3 Wisc. 9.

Many of the states have made full provisions, by statute, for the liens of repairers of domestic ships and builders of ships and steamboats. These liens are generally held to be distinct from maritime liens, though in some respects partaking of the nature of such. For a full discussion of this subject, and a classification of the laws of the different states, see 1 Pars. Mar. Law, 106, and note.

LIEUTENANT. This word has now a narrower meaning than it formerly had: its true meaning is a deputy, a substitute, from the French *lieu* (place or post) and *tenant* (holder). Among civil officers we have *lieutenant-governors*, who in certain cases perform the duties of governors (see the names of the several states), *lieutenants of police*, etc. Among military men, *lieutenant-general* was formerly the title of a commanding general, but now it signifies the degree above major-general. *Lieutenant-colonel* is the officer between the colonel and the major. *Lieutenant*, simply, signifies the officer next below a captain. In the navy, a *lieutenant* is the second officer next in command to the captain of a ship.

LIFE. "The sum of the forces by which death is resisted." Bichat.

A state in which energy of function is ever resisting decay and dissolution.

It commences, for many legal purposes, at the period of quickening, when the first motion of the fœtus in utero is perceived by the mother. 1 Bla. Com. 129; Co. 3d Inst. 50. It ceases at death. See DEATH.

But physiology pronounces life as existing from the period of conception, because fœtuses in utero do die prior to quickening, and then all the signs of death are found to be perfect; Dean, Med. Jur. 129, 130.

For many important purposes, however, the law concedes to physiology the fact that life commences at conception, *in ventre sa mère*. See FŒTUS. Thus, it may receive a legacy, have a guardian assigned to it, and an estate limited to its use; 1 Bla. Com. 130. It is thus considered as alive for all beneficial purposes; 1 P. Wms. 329.

But for the transfer of civil rights the child must be born alive. The ascertainment of this, as a fact, depends upon certain signs which are always attendant upon life: the most important of these is crying. As to

conditions of live birth, see BIRTH; INFANTICIDE.

Life is presumed to continue for one hundred years; 9 Mart. La. 257. As to the presumption of survivorship in case of the death of two persons, at or about the same time, see DEATH; 14 Cent. L. J. 367, a full article reprinted from the Irish L. Times.

LIFE-ANNUITY. An annual income to be paid during the continuance of a particular life. See ANNUITY.

LIFE-ASSURANCE. An insurance of a life upon the payment of a premium: this may be for the whole life, or for a limited time. On the death of the person whose life has been insured during the time for which it is insured, the insurer is bound to pay to the insured the money agreed upon. See 1 Bouvier, Inst. n. 1231; ASSURANCE; POLICY; Loss.

LIFE-RENT. In Scotch Law. A right to use and enjoy a thing during life, the substance of it being preserved.

A life-rent cannot, therefore, be constituted upon things which perish in the use; and though it may upon subjects which gradually wear out by time, as household furniture, etc., yet it is generally applied to heritable subjects. Life-rents are divided into conventional and legal.

The conventional are either simple or by reservation. A simple life-rent, or by a separate constitution, is that which is granted by the proprietor in favor of another. A life-rent by reservation is that which a proprietor reserves to himself in the same writing by which he conveys the fee to another. Life-rents by law are the terce and the courtesy. See TERCE; COURTESY.

LIFE-RENTER. In Scotch Law. A tenant for life without waste. Bell, Dict.

LIGAN, LAGAN. Goods cast into the sea tied to a buoy, so that they may be found again by the owners, are so denominated. When goods are cast into the sea in storms or shipwrecks, and remain there, without coming to land, they are distinguished by the barbarous names of jetsam, flotsam, and ligan. 5 Co. 108; Hargr. St. Tr. 48; 1 Bla. Com. 292.

LIGEANCE. The true and faithful obedience of a subject to his sovereign, of a citizen to his government. It signifies, also, the territory of a sovereign. See ALLEGIANCE.

LIGHT. The English doctrine of presumptive title to light and air, arising from the uninterrupted enjoyment of it for twenty years and upward, has not been followed in a majority of the United States; 19 Wend. 309; 19 Ohio St. 135; 33 Penn. 368; *contra*, 15 Am. L. Reg. N. S. 6 (a Delaware case); see, also, 1 Green, Ch. 57. See AIR. Nor in the United States does the doctrine of an implied reservation of an easement apply to an easement of light and air; 115 Mass. 204; 24 Iowa, 35; 33 Penn. 371; otherwise, if it is an easement of necessity; 58 Ga. 268; 5 W. Va. 1. See ANCIENT LIGHTS; AIR.

LIGHTERMAN. The owner or manager of a lighter. A lighterman is considered a common carrier. See LIGHTERS.

LIGHTERS. Small vessels employed in loading and unloading larger vessels.

The owners of lighters are liable like other common carriers for hire. It is a term of the contract on the part of the carrier or lighterman, implied by law, that his vessel is tight and fit for the purpose or employments for which he offers and holds it forth to the public; it is the immediate foundation and substratum of the contract that it is so: the law presumes a promise to that effect on the part of the carrier, without actual proof; and every principle of sound policy and public convenience requires it should be so; 5 East, 428; Abb. Shipp. 225; 1 Marsh. Ins. 254; Weskett, Ins. 328; Pars. Mar. Law.

LIGHTNING. An insurance policy provided that the insurer should be liable "for any loss or damage by lightning." The property insured was destroyed in a tornado. It was held, in an action for the loss, that the word lightning applies to any sudden and violent discharge of electricity occurring in nature, and that, as the evidence tended strongly to show the presence in the tornado of electrical disturbance presenting the usual characteristics of lightning, it was error to nonsuit the plaintiff; 11 N. W. Rep. 894.

LIGHTS. Those openings in a wall which are made rather for the admission of light than to look out of. 6 J. B. Moore, 47; 9 Bingh. 305. See ANCIENT LIGHTS.

Lamps carried on board vessels, under statutory regulations or otherwise, for the purpose of preventing collisions at night. See NAVIGATION RULES.

Lamps or lights placed in lighthouses, or other conspicuous positions, as aids to navigation at night. See NAVIGATION RULES.

LIMITATION IN LAW. A limitation in law, or an estate limited, is an estate to be holden only during the continuance of the condition under which it was granted, upon the determination of which the estate vests immediately in him in expectancy; 2 Bla. Com. 155.

LIMITATIONS. Of Civil Remedies. In general, by the theory and early practice of the common law, a party who had any legal ground of complaint against another might call the latter to answer in court at such time as suited his convenience; 13 East, 449. This privilege, however, it was soon found, might be productive of great inconvenience, and not unfrequently of great injustice. Parties might, and often did, wait till witnesses were dead or papers destroyed, and then proceeded to enforce claims to which at an earlier date a successful defence might have been made. Titles were thus rendered uncertain, the tenure of property insecure, and litigation fostered. To prevent these evils, statutes were passed limiting the time within which a party having a cause of action should appeal to the courts for redress,—

hence called statutes of limitation. The doctrine of *fines*, of very great antiquity in the history of the common law, the purpose of which was to put an end to controversies, grew out of the efforts to obviate these evils, and frequent attempts, prior to the accession of James I., by statutes of restricted application, were made to the same end. But till the reign of that prince no general enactment applicable alike to personal and real actions had been passed.

In 1623, however, by stat. 21 Jac. I. c. 16, entitled "An Act for Limitation of Actions, and for avoiding of Suits in Law," known and celebrated ever since as the *Statute of Limitations*, the law upon this subject was comprehensively declared substantially as it exists at the present day in England, whence our ancestors brought it with them to this country; and it has passed, with some modifications, into the statute-books of every state in the Union except Louisiana, whose laws of limitation are essentially the Prescriptions of the civil law, drawn from the *Partidas*, or Spanish Code.

The similarity between the statutes of the several states and those of England is such that the decisions of the British courts and those of this country are for the most part illustrative of all, and will be cited indiscriminately in this brief summary of the law as it now stands. *Vide* 5 B. & Ald. 204; 4 Johns. 317; 2 Caines, Cas. 143. One preliminary question, however, has arisen in this country, growing out of the provision of the national constitution prohibiting states from passing laws impairing the obligation of contracts, for which there is no English precedent. Upon this point the settled doctrine is that unless the law bars a right of action already accrued without giving a reasonable time within which to bring an action, it pertains to the remedy merely, and is valid; 4 Wheat. 122; 3 Dall. 386; 11 Pet. 420; 3 Whart. 15; 8 Mass. 423; 2 Gall. 141; 19 Pick. 578; 2 Mas. 169. Subject to this qualification, a law may extend or reduce the time already limited. But a cause of action already barred by pre-existing statutes will not be revived by a statute extending the time; 5 Metc. Mass. 400; 7 Penn. 292; 25 Vt. 41; 8 Blackf. 506; 2 Sandf. Ch. 61; 18 Pick. 532; 2 Greene (Iowa), 181; 2 Allen, 445; 11 Wisc. 432; 1 Oregon, 176; though if it be not already barred a statute extending the time will apply; 21 Ark. 95; 24 Vt. 620; 1 T. B. Monr. 424; 6 Leg. Gaz. (Pa.) 93.

Whatever may have been the disposition in the past, the courts are now inclined to construe these statutes liberally, so as to effectuate their intent; they are little inclined to fritter away their effect by refinements and subtleties; 1 Pet. 360; 8 Cra. 84; Ang. Lim. § 23.

Courts of equity, though not within the terms of the statute, have nevertheless uniformly conformed to its spirit, and have, as a general rule, been governed by its provisions, unless special circumstances of fraud or the like require, in the interests of justice, that they should be disregarded; 12 Pet. 56; 7 Johns. Ch. 90; 9 Pick. 242; 3 All. 42; 17 Ves. 96; 6 Pet. 61; Baldw. 419; 10 Wheat. 152; 4 How. 591; 10 Ohio, 424; 9 N. J. Eq. 425; 28 Ill. 44; 3 R. I. 237; Ang. Lim. § 183. And in some cases when claims are not barred by the statute of limitations, a court of equity will refuse to interfere, on the grounds of public policy, and the difficulty of doing entire justice between the parties when the original transaction may have become obscure by the lapse of time and the evidence lost. This is what is known as the doctrine of laches, *q. v.*; 94 U. S. 806; Ambl. 645; Bisph. Eq. § 260.

But in a proper case where there are no laches and where there is fraud undiscovered till the statute has become a bar, or it is the fault and wrong of the defendant that the plaintiff did not enforce his legal rights within the limited time, courts of equity will not hesitate to interfere in the interest of justice, and entertain suits long since barred at law; 4 How. 503; 11 Cl. & F. 714; 23 Iowa, 467; 12 Minn. 522; L. R. 8 Ch. App. 398; 11 Wall. 443. But here, again, courts of equity will proceed with great caution; 7 How. 819; and hold the complainant to allegation and proof of his ignorance of the fraud and when and how it was discovered; 1 Curt. C. C. 390; 1 Watts, 401.

And courts of admiralty are governed by substantially the same rules as courts of equity; 3 Mas. 91; 2 Sumn. 212; 3 Sumn. 286; 2 Gall. 477; Sprague, 163; 3 Salk. 227. And, although the statute does not apply in terms to probate courts, there seems to be no reason why it should not be applied according to the principles of equity; 1 Bradf. Surr. 1; *contra*, 61 Penn. 9, as to assets not administered.

AS TO PERSONAL ACTIONS.

It is generally provided that personal actions shall be brought within a certain specified time—usually six years or less—from the time when the cause of action accrues, and not after; 3 Binn. 374; 3 T. B. Mon. 113; 13 La. An. 161; and hereupon, the question at once arises when the cause of action in each particular case accrues.

Cause of action accrues when. The rule, that the cause of action accrues when and so soon as there is a right to apply to the court for relief, by no means solves the difficulty. When does the right itself so to apply accrue? Upon this point the decisions are so numerous and so conflicting, or, perhaps more accurately speaking, so controlled by particular circumstances, that no inflexible rule can be extracted therefrom. In general, it may be said that in actions of contract the cause of action accrues when there is a breach of the contract.

When a note is payable on demand, the statute begins to run from its date; 2 M. & W. 467; 9 Pick. 488; 10 N. H. 489; 5

Jones (Law), N. C. 139; 39 Me. 492; 7 Halst. 247; 50 Barb. 334; 17 Ohio, 9; 3 Grant's Cas. 138; 3 Rich. (S. C.) 182. The rule is the same if the note is payable "at any time within six years;" 39 Me. 492; or borrowed money is to be paid "when called on;" 1 Harr. & G. 439. But this is not true of a premium note payable in such portions and at such times as may be necessary to cover losses. There the statute only runs from the time of loss, and the assessment thereof; 40 N.Y. 320; and the statute runs in the case of an ordinary bank note, only from demand and refusal; 2 Sneed, 482. If the note be payable in certain days after demand, sight, or notice, the statute begins to run from the demand, sight, or notice; 13 Wend. 267; 2 Taunt. 323; 8 Dowl. & Ry. 374; 5 Halst. 114; 4 Harr. Del. 246; 24 Am. Rep. 605; s. c. 36 Mich. 487; demand of a note payable on demand should be made within the time limited for bringing the action on the note; else a note limited to six years might be kept open indefinitely by a failure to make a demand; 10 Pick. 120. Demand of a bill payable "after sight" or "after notice," should be within a reasonable time; 4 Mas. 336; 9 M. & W. 506. And when the note is on interest, this does not become barred by the statute till the principal, or some distinct portion of it, becomes barred; 2 Cush. 92. Demand upon a note or due bill, payable on demand, is not a condition precedent to a right of action; 11 W. N. C. (Pa.) 294. The rule, that a promissory note payable on demand with interest, is a continuing security, does not apply between holder and maker; 41 N. Y. 581; s. c. 1 Am. Rep. 461. If the note be entitled to grace, the statute runs from the last day of grace; 1 Shipl. 412; 13 La. An. 602.

Where money is payable in instalments the statute runs as to each instalment from the time of the failure to pay it; 10 Shepl. (Me.) 400; 71 Penn. 208. But if the contract provides that on failure to pay one instalment the whole amount shall fall due, the statute runs as to the whole from such failure; 3 Gale & D. 402.

Where money is paid by mistake, the statute begins to run from the time of payment; 9 Cow. 674; 25 Penn. 164; also in case of usury; 6 Ga. 228; 35 Vt. 503; but a shorter time is frequently limited by statute, and where money is paid for another as surety; 6 Cow. 225; 45 N. Y. 268; 110 Mass. 345.

Where a contract takes effect upon some condition or contingency, or the happening of some event, the statute runs from the performance of the condition; 5 Pick. 384; 17 Pick. 407; Ang. Lim. § 113; or the happening of the contingency or event; 3 Penn. 149; 9 Wend. 287; 1 Whart. 292; and not from the date of the contract. On an agreement to devise, the statute runs from the death of the promissor; 9 Penn. 260. When money is paid, and there is afterwards a failure of consideration, the statute runs from the failure; 14 Mass. 425; 9 Bing. 748.

Where continuous services are rendered, as by an attorney in the conduct of a suit, or by a mechanic in doing a job; 7 Allen, 274; 55 Penn. 434; 36 N. Y. 255; 16 Ill. 341; 1 B. & Ad. 15; 4 Watts, 334; the statute begins to run from the completion of the service. On a promise of indemnity, when the promissee pays money or is damnified, the statute begins to run; 12 Metc. 130; 8 M. & W. 680; 14 Johns. 368; 3 Rawle, 275; 7 Pet. 113.

As to torts *quasi ex contractu*, the rule is that in cases of *negligence*, *carelessness*, *unskilfulness*, and the like, the statute runs from the time when these happen respectively, and not from the time when damages accrue therefrom; 4 Pet. 172; 4 Ala. 495; 36 Md. 501; 61 Barb. 136; 2 Strobh. 344. Thus, where an attorney negligently invests money in a poor security, the statute runs from the investment; 2 Brod. & B. 73; so, where a party neglected to remove goods from a warehouse, whereby the *plaintiff* was obliged to pay damages, the statute runs from the neglect, and not from the payment of damages; 3 Johns. 137; so, where the defendant agreed to go into another state and collect some money, and on his return to pay off a certain judgment, the statute was held to run from the return and demand upon him; 3 Ired. 481.

The breach of the contract is the gist of the action, and not the damages resulting therefrom; 5 B. & C. 259; 1 Sandf. 98; 3 B. & Ald. 288. Thus, where the defendant had contracted to sell the plaintiff a quantity of salt, but was unable, by reason of the destruction of the salt, to deliver on demand, and prolonged negotiations for settlement till the statutory limitation had expired, and then refused, the statute was held to run from the demand, the non-delivery being a breach of the contract; 1 E. L. & Eq. 44. So, where *a notary public* neglects to give seasonable notice of non-payment of a note, and the bank employing him was held responsible for the failure, upon suit brought by the bank against the notary to recover the damages it had been obliged to pay, the action was held to be barred, it not being within six years of the notary's default, though within six years of the time when the bank was required to pay damages; 6 Cow. 278.

So, where *an attorney* makes a mistake in a writ, whereupon, after prolonged litigation, nonsuit follows, but not till an action against the indorser on the note originally sued has become barred, the mistake was held to set the statute in motion; 4 Pet. 172; 4 Ala. 495.

A captain who barratrously loses his vessel is freed from his liability to the underwriter in six years after the last act in the barratrous proceeding; 1 Campb. 539. *Directors of a bank* liable by statute for mismanagement are discharged in six years after the insolvency of the bank is made known; 16 Mass. 68.

In some states a distinction has been taken

in cases where a public officer has neglected duties imposed on him by law, and the statute is in such cases said to run only from the time when the injury is developed; 26 Conn. 324; but see 8 Shepl. 314; 97 Penn. 47; and it has been held that if a *sheriff* make an insufficient return, and there is in consequence a reversal of judgment, the statute runs from the return, and not from the reversal of judgment; 16 Mass. 456. So where a sheriff collects money and makes due return but fails to pay over, the statute runs from the return; 11 Ala. 679; or from the demand by the creditor; 10 Metc. 244. If he suffers an escape, it runs from the escape; 2 Mod. 212; if he takes insufficient bail, from the return of *non est inventus* upon execution against the principal debtor; 17 Mass. 60; 20 Me. 93; if he receive money in *scire facias*, from its reception; 9 Ga. 413; if he neglects to attach sufficient property, on the return of the writ, and not from the time when the insufficiency of the property is ascertained; 27 Me. 443.

The same principle applies in cases of *torts* pure and simple; 24 Penn. 186; 16 Pick. 241; 1 Rawle, 27; 4 Ohio, 331; 6 Ohio St. 276.

An action against a *recorder of deeds* for damages caused by a false certificate of search against encumbrances on real property, must be brought within six years from the date of the search, and not from the date of the discovery of the lien overlooked or of the loss suffered by the plaintiff; 97 Penn. 47.

In cases of nuisance, the statute begins to run from the injury to the right, without reference to the question of the amount of the damage, the law holding the violation of a right as some damage; 8 East, 4; 16 Pick. 241; 1 Rawle, 27; 10 Wend. 260. And so when a party having a right to use land for a specific purpose puts it to other uses, or wrongfully disposes of property rightfully in possession, the statute begins to run from the perversion; 24 Penn. 186. *In trover*, the statute runs from the conversion; 7 Mod. 99; 4 H. & J. 393; 21 Ga. 454; 15 Mass. 82; 5 B. & C. 149; *in replevin*, from the unlawful taking or detention. The limitation in the statute of James of *actions for slander* to two years next after the words spoken, applies only to cases where the words are actionable in themselves, and not when they become actionable by reason of special damage arising from the speaking thereof; 1 Salk. 206; 10 Wend. 167; 5 Watts, 308. The limitation extends neither to slander of title; Cro. Car. 140; nor to libel; Arch. Pl. 29. In cases of trespass, crim. con., etc., the statute runs from the time the injury was committed; 5 N. H. 314.

Adverse possession of personal property gives title in six years after the possession becomes adverse; 16 Vt. 124; 1 Brev. 111; 16 Ala. N. S. 696; 9 Tex. 123; 3 Metc. 137; 17 Tex. 206. But one who holds by consent of true owners is not entitled to have the statute run in his favor until denial of the true owner's claim; 34 Ala. 188; Ang. Lim. 304, n.; 55 N. H. 61. But different adverse possessions cannot be linked together to give title; 3 Strobh. 31; 1 Swan, 501; 11 Humphr. 369. The statute acts upon the title, and, when the bar is perfect, transfers the property to the adverse possessor; while in contracts for the payment there is no such thing as adverse possession, but the statute simply affects the remedy, and not the debt; 18 Ala. N. S. 248.

Computation of time. In computing the time limited, much discussion has been had in the courts whether the day when the statute begins to run is to be included or excluded, but without any satisfactory result. It is most generally held that when the computation is from an act done the day upon which the act is done is to be included, and when it is from the date simply, then if a present interest is to commence from the date the day of the date is included, but if merely used as a terminus from which to compute time, then the day of the date is excluded; 9 Cra. 104; 3 Term, 623; 1 Ld. Raym. 280; 17 Penn. 48; Price, Lim. & Liens, 361; Hob. 139; 15 Mass. 193; 2 Cow. 605. This rule, however, of including the day upon which an act is done, is subject to so many exceptions and qualifications that it can hardly be said to be a rule, and many of the cases are wholly irreconcilable with it. It has been well said that whether the day upon which an act is done or an event happens is to be included or excluded, depends upon the circumstances and reasons of the thing, so that the intention of the parties may be effected; and such a construction should be given as will operate most to the ease of the party entitled to favor, and by which rights will be secured and forfeitures avoided; 1 Tex. 107; Ang. Lim. c. VI. Fractions of a day are not regarded, unless it becomes necessary in a question of priority; 2 Story, 571; 4 Gilm. (Ill.) 499; 8 Ves. 83; 3 Denio, 12; 6 Gray, 316; and then only in some cases, usually in questions concerning private acts and transactions; 20 Vt. 653.

Exceptions to general rule. If, when the right of action would otherwise accrue and the statute begin to run, *there is no person who can exercise the right*, the statute does not begin to run till there is such a person; 8 Cra. 84; for this would be contrary to the intent of the various statutes. Thus, if a note matures after the decease of the promisee, and prior to the issue of letters of administration, the statute runs from the date of the letters of administration unless otherwise specified in the statute; 5 B. & Ald. 204; 13 Wend. 267; 9 Leigh, 79; 7 H. & Johns. 14; 4 Whart. 130; 32 Vt. 176; 15 Conn. 145, 149; and there must be a person in being to be sued, otherwise the statute will not begin to run; 12 Wheat. 129; 5 Harr. 299.

But the courts will not recognize exemptions, where the statute has once begun to run. So where the statute begins to run before the death of the testator or intestate, it

is not interrupted by his death; 4 M. & W. 43; 3 M. & C. 455; 4 Edw. Ch. 733; 3 McLean, 568; nor by the death of the administrator; 17 Ala. N. S. 291; nor by his removal from the state; 15 Ala. N. S. 545. So an insolvent's discharge as effectually removes him from pursuit by his creditor as absence from the state; but it is not an exception within the statute, and cannot avail; 1 Whart. 106; 1 Penn. 332; 1 Cow. 356; 6 Gray, 517. A creditor's absence makes it inconvenient for him to return and sue; but as he can so do, he must, or be barred; 17 Ves. Ch. 87; 1 Wils. Ch. 134; 1 Johns. 165. And it has ever been held that a *statutory impediment* to the assertion of title will not help the party so impeded; 2 Wheat. 25; but when a state of war exists between the governments of the debtor and creditor, the running of the statute is suspended; 22 Wall. 576; Chase, Dec. 286; 29 Ark. 238; 55 Ga. 274; 62 Mo. 140; 11 Bush, 191; 13 Wall. 158; and revives in full force on the restoration of peace.

There are many authorities, however, to show that if, by the interposition of courts, the necessity of the case, or the provisions of a statute, a person cannot be sued for a limited time, the currency of the statute is suspended during that period. In other words, if the law interposes to prevent suit, it will see to it that he who has a right of action shall not be prejudiced thereby; 4 Md. Ch. Dec. 368; 5 Ga. 66; 3 McLean, 568; 12 Wheat. 129; 2 Denio, 577; 20 How. 128. But see 21 Penn. 220. Thus, *an injunction* suspends the statute; 1 Md. Ch. Dec. 182; 12 Gratt. 579; 2 Stockt. 347; 10 Humphr. 365; 31 N. Y. 345; 13 La. An. 57; 106 Mass. 347. And so does an *assignment of an insolvent's effects*, as between the estate and the creditors; 7 Metc. 435; 7 Rich. (S. C.) 43; 12 La. An. 216; though not, as has just been said, as between the debtor and his creditor; 6 Gray, 517. But *when the statute does not in terms exclude and limit* a particular case, the court will not extend it, although the case comes within the reason of the statute; 15 Ala. 194; 2 Curt. 480; 17 Ohio St. 548; 53 Penn. 382.

By the special provisions of the statute, *infants*, *married women*, *persons* non compos mentis, *those imprisoned*, and *those beyond seas*, *out of the state*, *out of the realm*, or *out of the country*, are regarded as affected by the incapacity to sue, or, in other words, as being under disability, and have, therefore, the right of action secured to them until the expiration of the time limited, after the removal of the disability. These personal exceptions have been strictly construed, and the party alleging the disability has been very uniformly held to bring himself exactly within the express words of the statute to entitle himself to the benefit of the exception. To bring himself within the spirit or supposed reason of the exception is not enough; 1 Cow. 356; 3 Green, N. J. 171; 2 Curt. C. C. 480; 17 Ves. Ch. 87; 4 Ben. 459. And this privilege is accorded although the person laboring under the statute disability might in fact bring suit. Thus, an infant may sue before he arrives at his majority, but he is not obliged to, and his right is saved if he does not; 2 Saund. 117. The disability must, however, be continuous and identical. One disability cannot be superadded to another so as to prolong the time, and if the statute once begins to run, whether before a disability exists or after it has been removed, no intervention of another and subsequent disability can stop it; 29 Penn. 495; 15 B. Mon. 30; 54 Ill. 101; 2 McCord, 269. When, however, there are two or more coexisting disabilities at the time the right of action accrues, suit need not be brought till all are removed; Plowd. 375; 20 Mo. 530; 1 Atk. Ch. 610; 1 Shepl. 397; 3 Johns. Ch. 129.

"Beyond seas" means, generally, without the jurisdiction of the state or government in which the question arises; 1 Show. 91; 32 E. L. & Eq. 84; 3 Cra. 174; 3 Wheat. 341; 1 H. & M'H. 350; 14 Pet. 141; 2 McCord, 331; 13 N. H. 79; 24 Conn. 432; 52 N. H. 41; 6 Allen, 423. In Pennsylvania, Missouri, Illinois, and Michigan, however, and perhaps other states, contrary to the very uniform current of authorities, beyond seas is held to mean out of the limits of the United States; 2 Dall. 217; 9 S. & R. 285; 14 Mo. 431; 20 *id.* 530; 2 Greene (Iowa), 602; 24 Ill. 159. And the United States courts adopt and follow the decisions of the respective states upon the interpretation of their respective laws; 11 Wheat. 361. What constitutes absence out of the state within the meaning of the statute, is wholly undeterminable by any rule to be drawn from the decisions. It seems to be agreed that temporary absence is not enough; but what is a temporary absence is by no means agreed. *Vide* Ang. Lim. § 200, n.

The word return, as applied to an absent debtor, applies as well to foreigners, or residents out of the state coming to the state, as to citizens of the state who have gone abroad and have returned; 3 Johns. 267; 11 Pick. 36; 3 R. I. 178. And in order to set the statute in motion the return must be open, public, and such and under such circumstances as will give a party, who exercises ordinary diligence, an opportunity to bring his action; 1 Pick. 263; 3 Gill & J. 158; 15 Vt. 727; 26 Barb. 208. Such a return, though temporary, will be sufficient; 8 Cra. 174. But if the return is such and under such circumstances as to show that the party does not intend that his creditor shall take advantage of his presence, or such, in fact, that he cannot without extraordinary vigilance avail himself of it,—if it is secret, concealed, or clandestine,—it is insufficient. The absence of one of several joint-plaintiffs does not prevent the running of the statute; 4 Term, 516; but the absence of one of several joint-defendants does; 29 E. L. & Eq. 271. This at least seems to be the settled law of England; but the cases in the several states

of the Union are conflicting upon these points. See 1 Dutch. 219; 18 N. Y. 567; 18 B. Mon. 312; 4 Sneed, 99. The exception as to being beyond seas does not apply to defendants in Pennsylvania; 1 Miles, 164.

Commencement of process. The question sometimes arises as to what constitutes the bringing an action or the commencement of process, and this is very uniformly held to be the delivery or transmission by mail in due course of the writ or process to the sheriff, in good faith, for service; 14 Wend. 649; 15 Mass. 859; 1 S. & R. 236; 20 Md. 479; 8 Greenl. (Mo.) 447; 1 W. Chip. 94. The date of the writ is *primâ facie* evidence of the time of its issuance; 17 Pick. 407; 7 Me. 370; but is by no means conclusive; 2 Burr. 950; 15 Mass. 364.

If the writ or process seasonably issued *fail of a sufficient service* or return by any unavoidable accident, or by any default or neglect of the officer to whom it is committed, or is abated, or the action is otherwise avoided by the death of any party thereto, or for any matter of form, or judgment for plaintiff be arrested or reversed, the plaintiff may, either by virtue of the statutory provision or by reason of an implied exception to the general rule, commence a new action within a reasonable time; and that reasonable time is usually fixed by the statute at one year, and by the courts in the absence of statutory provision at the same period; 1 Ld. Raym. 434; 2 Penn. 382; 1 Bailey (S. C.), 542; 10 Wend. 278. *Irregularity of the mail* is an inevitable accident within the meaning of the statute; 8 Me. 447. And so is a *failure of service* by reason of the removal of the defendant, without the knowledge of the plaintiff, from the county in which he had resided and to which the writ was seasonably sent; 12 Metc. 15. But a mistake of the attorney as to time of the sitting of the court, and consequent failure to enter, is not; 29 Me. 458. *An abatement by the marriage* of the female plaintiff is no abatement within the statute; it is rather a voluntary abandonment; 8 Cra. 84. And so, generally, of any act of the party or his attorney whereby the suit is abated or the action fails; 3 M'Cord, 452; 29 Me. 458; 1 Mich. 252; 6 Cush. 417.

A *nonsuit* is in some states held to be within the equity of the statute; 13 Ired. 123; 4 Ohio St. 172; 12 La. An. 672; but generally otherwise; 1 S. & R. 236; 3 M'Cord, 452; 3 Harr. N. J. 269; 6 Cush. 417. *If there are two defendants*, and by reason of a failure of service upon one an alias writ is taken out, this is no continuance, but a new action, and the statute is a bar; 6 Watts, 528. So of amending bill introducing new parties; 6 Pet. 61; 10 B. Mon. 84; 3 Me. 535. A dismissal of the action because of the *clerk's omission seasonably to enter* it on the docket is for matter of form, within the Massachusetts statute, and a new suit may be instituted within one year thereafter; 7 Gray, 165; and so is a dismissal for want of jurisdiction, where the action is brought in the wrong county; 1 Gray, 580. In Maine, however, a wrong venue is not a matter of form; 38 Me. 217. The statute is a bar to an action at law after a dismissal from chancery for want of jurisdiction; 1 Vern. 74; 16 Wend. 572; 2 Munf. 181.

Lex fori governs. Questions under the statute are to be decided by the law of the place where the action is brought, and not by the law of the place where the contract is made or the wrong done. If the statute has run against a claim in one state, the remedy is gone, but the right is not extinguished; and therefore the right may be enforced in another state where the remedy is still open, the time limited by the statute not having expired; 15 East, 439; 11 Pick. 36, 522; 7 Md. 91; 23 How. 132; 13 Gray, 535; 13 Pet. 312. So if the statute of the place of the contract is still unexpired, yet an action brought in another place is governed by the *lex fori*, and may be barred; 1 Caines, 402; 8 Dow, P. C. 516; 5 Cl. & F. 1. But statutes giving title by adverse possession are to be distinguished from statutes of limitation. Adverse possession gives title; lapse of time bars the remedy only. And a right acquired by adverse possession in the place where the adverse possession is had is good elsewhere; 11 Wheat. 361; 5 Cranch, 358; 9 How. 407; Story, Confl. Laws, 582.

Public rights not affected. Statutes of limitation do not on principles of public policy run against the state or the United States, unless it is expressly so provided in the statute itself. No laches is to be imputed to the government; 2 Mas. 312; 18 Johns. 228; 4 Mass. 528. But this principle has no application when a party seeks his private rights in the name of the state; 4 Ga. 115; but see 6 Penn. 290. Counties, towns, and municipal bodies not possessed of the attributes of sovereignty have no exemption; 4 Dev. 568; 22 Me. 445; 12 Ill. 38; 13 Wall. 62; but see 8 Ohio, 298. If, however, the sovereign becomes a party in a private enterprise, as, for instance, a stockholder in a bank, he subjects himself to the operation of the statute; 3 Pet. 30; 2 Brock. 393.

Particular classes of actions. Actions of *trespass*, *trespass* quare clausum, *detinue*, *account*, *trover*, *replevin*, and *upon the case* (except actions for slander), and action of *debt for arrearages of rent*, and of *debt* grounded upon any lending or contract *without specialty*, or simple contract debt, are usually limited to six years. Actions for *slander*, *libel*, *assault*, and the like, are usually limited to a less time, generally two years. Judgments of courts not of record, as courts of justices of the peace, and county commissioners' courts, are in some states, either by statute or the decisions of the highest courts, included in the category of debts founded on contract without specialty, and accordingly come within the statute; 13 Metc. 251; 2 Bail. 58; 37 Me. 29; 2 Grant, Cas.

353; 6 Barb. 583; 3 Living. 367. In others, however, they are excluded upon the ground that the statute applies only to debts founded on contracts in fact, and not to debts founded on contracts implied by law; 14 Johns. 480.

Actions of *assumpsit*, though not specifically named in the original statute of James I. as included within the limitation of six years, were held in England, after much discussion, to be fairly embraced in actions of "trespass;" 4 Mod. 105; 4 B. & C. 44; 4 Ad. & E. 912. The same rule has been adopted in this country; 5 Ohio, 444; 3 Pet. 270; 1 Morr. Iowa, 59; 8 Cra. 98; but see 12 M. & M. 141; and, in fact, assumpsit is expressly included in most of the statutes. And it has also been held in this country that statutes of limitation apply as well to motions made under a statute as to actions; 11 Humphr. 423. Such statutes are in aid of the common law, and furnish a general rule for cases that are analogous in their subject-matter, but for which a remedy unknown to the common law has been provided by statutes; as where compensation is sought for land taken for a railroad; 23 Penn. 371; 32 Conn. 521.

But it must be remembered that in all such cases the debt is not discharged though the right of action to enforce it may be gone. So, where a creditor has a lien on goods for a balance due, he may hold them, though the statute has run against his debt; 3 Esp. 81; 11 Conn. 160; 26 Me. 330; 28 Ill. 44. And an acceptor may retain funds to indemnify him against his acceptances, though the acceptances may have been outstanding longer than the time limited by statute; 3 Campb. 418.

A *set-off* of a claim against which the statute has run cannot usually be pleaded in bar; 5 East, 16; 3 Johns. 261; 8 Watts, 260; 5 Gratt. 360; 14 Penn. 531; though when there are cross-demands accruing at nearly the same time, and the plaintiff has saved the statute by suing out process, the defendant will be allowed to set off his demand; 2 Esp. 569; 2 Green, N. J. L. 545; and, generally, when there is any equitable matter of defence in the nature of set-off, or which might be the subject of a cross-action, growing out of the subject-matter for which the action is brought, courts will permit it to be set up although a cross-action or an action on the claim in set-off might be barred by the statute; 8 Rich. So. C. 113; 9 Ga. 398; 11 E. L. & Eq. 10; 8 B. Monr. 580; 3 Stockt. 44.

Debts by specialty, as contracts under seal, judgments of courts of record (except foreign judgments, and judgments of courts out of the state, upon which the decisions are very discordant), liabilities imposed by statute, awards under seal, or where the submission is under seal, indentures reserving rent, and actions for legacies, are affected only by the general limitation of twenty years; Angell, Lim. § 77. A mortgage, though under seal, does not take the note, not witnessed, secured thereby, with it, out of the limitation of simple contracts; 7 Wend. 94. And though liabilities imposed by statute are specialties, a liability under a by-law made by virtue of a charter is not; 6 E. L. & Eq. 309; on the ground that by becoming a member of the company enacting the by-laws the party consents and agrees to assume the liabilities imposed thereby.

In Massachusetts, Vermont, and Maine, the statute is regulated in its application to witnessed promissory notes. In Massachusetts an action *brought by the payee of a witnessed promissory note*, his executor or administrator, is excepted from the limitation of simple contracts, and is only barred by the lapse of twenty years. But the indorsee of such a note must sue within six years from the time of the transfer to him; 4 Pick. 384; though he may sue after that time in the name of the payee, with his consent; 1 Gray, 261; 2 Curtis, C. C. 448. If there are two promissees to the note, and the signature of only one is witnessed, the note as to the other is not a witnessed note; 115 Mass. 599; 18 Shepl. 49. And the attestation of the witness must be with the knowledge and consent of the maker of the note; 8 Pick. 246; 1 Williams, Vt. 26. An attested indorsement signed by the promissee, acknowledging the note to be due, is not a witnessed note; 23 Pick. 282; but the same acknowledgment for value received, with a promise to pay the note, is; 1 Metc. Mass. 21. If the note be payable to the maker's own order, witnessed and indorsed by the maker in blank, the indorsement being without attestation, an action by the first indorsee is barred in six years; 4 Metc. Mass. 219. And even if the indorsement be attested, a second indorsee or holder by delivery, not being the original payee, is barred; 13 Metc. 128.

Statute bar avoided, when. Trusts in general are not within the operation of the statute, where they are direct and exclusively within the jurisdiction of a court of equity, and the question arises between the trustees and the *cestui que trust;* 7 Johns. Ch. 90; 1 Watts, 275; 23 Penn. 472; 1 Md. Ch. Dec. 53; 5 R. I. 79; 9 Pick. 212. And of this character are the trusts of executors, administrators, guardians, assignees of insolvents, and the like. The claim or title of such trustees is that of the *cestui que trust*; 2 Sch. & L. 607, 633; 4 Whart. 177; 71 Penn. 106; 1 Johns. Ch. 314; 4 Pick. 283. Special limitations to actions at law are made in some states in favor of executors and administrators, modifying or abrogating the rule in equity; and as these laws are made in the interest of the trust funds, it is the duty of the executor or administrator to plead the special statute which applies to him as such and protects the estate he represents, though he is not bound to plead the general statute; 13 Mass. 203; 3 N. H. 491; 15 *id.* 6; 15 S. & R. 231; 2 Dess. 577; 4 Wash. C. C. 639.

If, however, the trustee deny the right of his *cestui que trust*, and claim adversely to him, and these facts come to the knowledge of the *cestui que trust*, the statute will begin to run from the time when the facts become known; 9 Pick. 212; 10 Pet. 223; 3 Gill & J. 389; 22 Md. 142; 52 Mo. 182; 11 Penn. 207.

Principal and agent. The relation of an agent to his principal is a fiduciary one, and the statute does not begin to run so long as there is no breach of the trust or duty. When, however, there is such a breach, and the principal has knowledge of it, the statute will begin to run; 3 Gill & J. 389; 5 Cra. 560; 4 Jones (N. C.), 155; 12 Barb. 293; 32 Conn. 520. In many cases, a lawful demand upon the agent to perform his duty, and neglect or refusal to comply, are necessary to constitute a breach. As when money is placed in the hands of an agent with which to purchase property, and the agent neglects to make the purchase, there must be a demand for the money before the statute will begin to run; 5 Ired. 507; 6 Cow. 376; 24 Penn. 52; 48 *id.* 524; so where property is placed in the hands of an agent to be sold, and he neglects to sell; 2 Gill & J. 389. If, however, the agent's conduct is such as to amount to a declaration on his part that he will not perform his duty, or if he has disabled himself from performing it, it is tantamount to a repudiation of the trust, or an adverse claim against the *cestui que trust*, and the same consequences follow. No demand is necessary; the right of action accrues at once upon the declaration, and the statute then begins to run; 10 Gill & J. 422.

But where a demand is necessary, it should itself be made within the limited time; otherwise an agent might be subject all his lifetime to demands, however stale; 15 Wend. 302; 17 Mass. 145; 66 Penn. 192; see 10 Johns. 285; unless the agent, by his own act, prevents a demand; 6 Cush. 501. The rendering an untrue account by a collection or other agent would seem to be such a breach of duty as to warrant an action without demand, and would therefore set the statute in motion; 17 Mass. 145. If the custom of trade or the law makes it the clear duty of an agent to pay over money collected without a demand, then if the principal has notice the statute begins to run from the time of collection; and when there is no such custom or law, if the agent having funds collected gives notice to his principal, the statute will begin to run after the lapse of a reasonable time within which to make the demand, though no demand be made; 4 Sandf. 590.

In equity, as has been seen, *fraud practised* upon the plaintiff so that the fact of his right to sue does not come to his knowledge till after the expiration of the statute of limitations, is held to open the case so that he may bring his action within the time limited, dating from the discovery of the fraud. But herein the courts proceed with great caution, and require not only a clear case of fraudulent concealment, but the absence of negligence on the part of the party seeking to obviate the statute limitation by the replication of fraud; 7 How. 819; 12 Penn. 49; 1 Curt. C. C. 390; 5 Johns. Ch. 522; 2 Denio, 577; 11 Ohio, 194; 20 N. H. 187. In some states, fraudulent concealment of the cause of action is made by statute a cause of exemption from its effect in courts of law as well as of equity. And the courts construe the saving clause with great strictness, and hold that means of knowledge of the concealment are equivalent to knowledge in fact; 8 Allen, 130; 39 Me. 404. In the absence of statutory provision, the admissibility of the replication of fraud in courts of law has been the subject of contradictory decisions in the different states. In New York (20 Johns. 30), in Virginia (4 Leigh, 474), and in North Carolina (3 Murph. 115), it is inadmissible. But in the United States courts (1 McLean, 185), Pennsylvania (12 S. & R. 128), Indiana (4 Black, 85), New Hampshire (8 Foster, 26), South Carolina (8 Rich. Eq. 130), it is held to be admissible; 5 Mas. 143; and this is the rule generally prevalent in the United States.

Running accounts. Such accounts as concern the trade of merchandise between merchant and merchant were by the original statute of James I. exempted from its operation. The earlier statutes of limitation in this country contained the same exception. But it has been very generally omitted in late revised codes. Among the accounts excepted from the operation of the statute all accounts current were early held to be included; 6 Term, 189; if they contained upon either side any item upon which the right of action accrued within six years, whether the accounts were between merchant and merchant or other persons. And this construction of the law, based, as is said in some cases, upon the ground that such accounts come within the equity of the exception in respect to merchants' accounts, and in others upon the ground that every new item and credit in an account given by one party to another is an admission of there being some unsettled account between them, and, as an acknowledgment, sufficient to take the case out of the statute, has taken the form of legislative enactment in many states in this country, and, in the absence of such enactment, has been generally followed by the courts; 20 Johns. 576; 6 Pick. 364; 6 Me. 308; 6 Conn. 246; 4 Rand. 488; 12 Pet. 300; 11 Gill & J. 212; 4 M'Cord, 215; 3 Harr. N. J. 266; 5 Cra. 15; 7 *id.* 350; 1 Md. 333; 25 Penn. 296; 30 Cal. 126.

But there must be a reciprocity of dealing between the respective parties, and the accounts must be such that there may be a fair implication that it is understood that the items of one account are to be a set-off so far as they go against the items of the other account; 2 Sumn. 410; 40 Mo. 244; 2 Hals.

357; 4 Cra. 696; 1 Edw. Ch. 417; 25 Penn. 296. Where the items of account are all on one side, as between a shopkeeper and his customer, or where goods are charged and payments credited, there is no mutuality, and the statute bars the account; 4 M'Cord, 215; 1 Sandf. 220; 17 S. & R. 347; 18 Ala. 274. And where, in the case of mutual account, after a statement, the balance has been struck and agreed upon, the statute at once applies to such balance as a distinct demand; 2 Saund. 125; 6 Me. 308; 1 Daveis, 294; 12 Pet. 300; 7 Cra. 147; unless it was made the first item of a new mutual account; 3 Pick. 96; 1 Mod. 270; 8 Cl. & F. 121.

A closed account is not a stated account. In order to constitute the latter, an account must have been rendered by one party, and expressly or impliedly assented to by the other; 8 Pick. 187; 6 Me. 308; 12 Pet. 300; 7 Cra. 147. Accounts between merchant and merchant are exempted from the operation of the statute, if current and mutual, although no item appears on either side within six years; 19 Ves. 180; 2 Saund. 124; 8 Bligh, 352; 6 Pick. 364; 5 Cra. 15; 13 Penn. 310; 1 Smith (Ind.), 217. A single transaction between two merchants is not within the exception; 17 Penn. 238; nor is an account between partners; 3 R. I. 87; nor an account between two joint-owners of a vessel; 10 B. Monr. 112; nor an account for freight under a charter-party, although both parties are merchants; 6 Pet. 151.

New promise to pay debt barred. There is another important class of exceptions, not made by the statute, but by the courts, wherein, although the statutory limitation may have expired, parties bringing themselves within the exception have always been allowed to recover. In actions of assumpsit, a new express promise to pay, or an acknowledgment of existing indebtedness made under such circumstances as to be equivalent to a new promise and within six years before the time of action brought, will take the case out of the operation of the statute, although the original cause of action accrued more than six years before that time. And this proceeds upon the ground that as the statutory limitation merely bars the remedy and does not discharge the debt, there is something more than a merely moral obligation to support the promise,—to wit, a pre-existent debt, which is a sufficient consideration for the new promise; 2 Mas. 151; 8 Gill, 155; 19 Ill. 109; 26 Vt. 230; 9 S. & R. 128. The new promise upon this sufficient consideration constitutes, in fact, a new cause of action; 4 East, 399; 6 Taunt. 210; 1 Pet. 351.

This was undoubtedly a liberal construction of the statute; but it was early adopted, and has maintained itself, in the face of much adverse criticism, to the present time. While, however, at an early period there was an inclination of the courts to accept the slightest and most ambiguous expressions as evidence of a new promise, the spirit and tendency of modern decisions are towards greater strictness, and seem to be fairly expressed in the learned judgment of Mr. Justice Story, in the case of Bell *v.* Morrison, 1 Pet. 351. "It has often been matter of regret, in modern times, that, in the construction of the statute of limitations, the decisions had not proceeded upon principles better adapted to carry into effect the real objects of the statute; that, instead of being viewed in an unfavorable light, as an unjust and discreditable defence, it had [not] received such support as would have made it, what it was intended to be, emphatically a statute of repose. It is a wise and beneficial law, not designed merely to raise a presumption of payment of a just debt from lapse of time, but to afford security against stale demands after the true state of the transactions may have been forgotten, or be incapable of explanation, by reason of the death or removal of witnesses. It has a manifest tendency to produce speedy settlement of accounts, and to suppress those prejudices which may rise up at a distance of time and baffle every honest effort to counteract or overcome them. Parol evidence may be offered of confessions (a species of evidence which, it has been often observed, it is hard to disprove and easy to fabricate) applicable to such remote times as may leave no means to trace the nature, extent, or origin of the claim, and thus open the way to the most oppressive charges. If we proceed one step further, and admit, that loose and general expressions, from which a probable or possible inference may be deduced of the acknowledgment of a debt by a court or jury, that, as the language of some cases has been, any acknowledgment, however slight, or any statement not amounting to a denial of the debt, that any admission of the existence of an unsettled account, without any specification of amount or balance, and however indeterminate and casual, are yet sufficient to take the case out of the statute of limitations, and let in evidence, *aliunde*, to establish any debt, however large and at whatever distance of time; it is easy to perceive that the wholesome objects of the statute must be in a great measure defeated, and the statute virtually repealed." . . . "If the bar is sought to be removed by the proof of a new promise, that promise, as a new cause of action, ought to be proved in a clear and explicit manner, and be in its terms unequivocal and determinate; and, if any conditions are annexed, they ought to be shown to be performed."

And to the same general purport are the following cases, although it is undeniable that in the application of the rule there seems in some cases to be a looseness and liberality which hardly comport with the rule. 32 Me. 260; 14 N. H. 422; 22 Vt. 179; 7 Hill, N. Y. 45; 16 Penn. 210; 12 Ill. 146; 4 Fla. 481; 5 Ga. 486; 9 B. Monr. 614; 10 Ark. 134; 11 Ired. 445; 8 Gratt. 110; 20 Ala. N. S. 687; 4 Zabr. 427; 14 N. H. 422; 12 Ill. 146; 4 Gray, 606; 33 Vt. 9; 5 Nev. 206; 54 Penn. 172; 11 How. 493; 8 Fost. 26.

A new provision to pay the principal only, does not except the interest from the operation of the statute; 29 Penn. 189. Nor does an agreement to refer take the claim out of the statute; 1 Sneed, 464; nor the insertion, by an insolvent debtor, of an outlawed claim in a schedule of his creditors required by law; 2 Miles, 424; 10 Penn. 129; 7 Gray, 274 (but this is not so in Louisiana; 14 La. An. 612); 12 Metc. 470; nor an agreement not to take advantage of the statute; 29 Me. 47; 17 Penn. 232; 8 Md. 374; 9 Leigh, 381. If such an agreement were valid, it might be made part of the contract, and thus the object of the law would be defeated; 32 Me. 169. Nor will a devise of property to pay debts exempt debts upon which the statute has run prior to the testator's death; 13 Ala. 611; 4 Whart. 445; 4 Penn. 56; 13 Gratt. 329; 4 Sandf. 427.

Nor, in general, will any statement of a debt, made officially, in pursuance of special legal requirement, or with another purpose than to recognize it as an existing debt; 5 Me. 140; 12 E. L. & Eq. 191; 9 Cush. 390; 30 Me. 425; 32 Ala. 134. Nor will a deed of assignment made by the debtor for the payment of certain debts, and of his debts generally, and a partial payment by the assignor to a creditor; 1 R. I. 81; 6 E. L. & Eq. 520; nor the entry of a debt in an unsigned schedule of the debtor's liabilities, made for his own use; 30 Me. 425; nor an undelivered mortgage to secure a debt against which the statute has run, though duly executed, acknowledged, and recorded; 6 Cush. 151. But if the mortgage be delivered, it will be a sufficient acknowledgment to exempt the debt secured thereby from the operation of the statute; 4 Cush. 559; 18 Conn. 257; 14 Tex. 672. And so will the answer to a bill in chancery which expressly sets forth the existence of such a debt; 4 Sandf. 427; 3 Gill. 166.

If there is any thing said to repel the inference of a promise, or inconsistent therewith, the statute will not be avoided; 1 Harr. & J. 219; 23 Penn. 452; 6 Pet. 86; 2 Cra. C. C. 120; 5 Blackf. 436; 11 La. An. 712; 14 Me. 300; 4 Mo. 100; 15 Wend. 137. "The account is due, and I supposed it had been paid, but did not know of its being ever paid," is no new promise; 8 Cra. 72. If the debtor admits that the debt is due, but intimates his purpose to avail himself of the bar of the statute, the acknowledgment is insufficient; 2 Dev. & B. 82; 2 Browne, 35; 29 Conn. 457. So if he says he will pay if he owes, but denies that he owes; 3 Me. 97; 2 Pick. 368. So if he states his inability to pay; 22 Pick. 291; 13 N. H. 486. So if he admits the claim to have been once due, but claims that it is paid by an account against the claimant; 3 Fairf. 72; 5 Conn. 480; 11 Conn. 160. "I am too unwell to settle now; when I am better, I will settle your account:" held insufficient; 9 Leigh, 381. So of an offer to pay a part in order to get the claim out of the hands of the creditor; 2 Bail. So. C. 283; and of an admission that the account is right; 4 Dana, 505.

If the new promise is subject to conditions or qualifications, is indefinite as to time or amount, or as to the debt referred to, or in any other way limited or contingent, the plaintiff will be held to bring himself strictly within the terms of the promise, and to show that the condition has been performed, or the contingency happened, and that he is not excluded by any limitation, qualification, or uncertainty; 11 Wheat. 309; 6 Pet. 86; 10 Allen, 438; 8 Metc. 432; 15 Johns. 511; 3 Bingh. 638; 3 Hare, 299. If the promise be to pay when able, the ability must be proved by the plaintiff; 4 Esp. 36; 13 N. H. 486; 9 Penn. 410; 11 Barb. 254. But see 19 Vt. 308; 30 Ill. 429; 7 Hill, 45; 15 Ga. 395. So if it be to pay as soon as convenient, the convenience must be proved; 2 Cr. & M.; or, "if E will say that I have had the timber," the condition must be complied with; 1 Pick. 370.

And if there be a promise to pay in specific articles, the plaintiff must show that he offered to accept them; 8 Johns. 318. The vote of a town to appoint a committee to "settle the dispute" was held to be a conditional promise, requiring, to give it force as against the statute, proof that the committee reported something due; 11 Mass. 452. If the original promise be conditional, and the new promise absolute, the latter will not alter the former; 3 Wash. C. C. 404. But where the promise by A, was to pay if the debtor could not prove that B had paid it, it was held that the onus was upon A to prove that B had paid it; 11 Ired. 445. The offer must be accepted altogether or rejected altogether. The liability of the defendant is to be tried by the test he has himself prescribed; 4 Leigh, 603; 10 Johns. 35; 1 Gill & J. 497.

It must appear clearly that the promise is made with reference to the particular demand in suit; 6 Pet. 86; 6 Ga. 21; 1 Kay, 650; 11 Ired. 86; though a general admission would seem to be sufficient, unless the defendant show that there were other demands between the parties; 21 Pick. 2123; 4 Gray, 606; 8 Gill, 82; 19 Penn. 388; 23 Conn. 453. If the admission be broad enough to cover the debt in suit, according to some authorities the plaintiff can prove the amount really due *aliunde*. But the authorities are not at one on this point; 12 C. & P. 104; 6 N. H. 367; 19 Penn. 388; 22 Penn. 308; 22 Pick. 291; 27 Me. 433; 1 Pet. 351; 9 Leigh, 381; 2 D. & B. 390: 23 Penn. 413.

Part payment of a debt is evidence of a new promise to pay the remainder; 2 Dougl. 552; 19 Vt. 28; 6 Barb. 583. It is, however, but *prima facie* evidence, and may be rebutted by other evidence; 28 Vt. 642; 27 Me. 370; 4 Mich. 508; L. R. 7 Q. B. 493; 13 Wall. 254; 53 N. Y. 442; 33 Miss. 41; 5 Ark. 638. Payment of the interest has the same effect as payment of part of the principal;

8 Bingh. 309; 2 Tyrwh. 121; 7 Blackf. 537; 17 Cal. 574; 14 Pick. 387. And the giving a note for part of a debt; 2 Metc. 168; or for accrued interest, is payment; 13 Wend. 267; 6 Metc. 553; and so is the credit of interest in an account stated; 6 Johns. 267; and the delivery of goods on account; 4 Ad. & E. 71; 30 Me. 253; 11 How. 493. But the payment of a dividend by the assignee of an insolvent debtor is no new promise to pay the remainder; 7 Gray, 387; 6 E. L. & Eq. 520; and it has been held by respectable authorities that new part payment is no new promise, but that in order to take the case out of the statute, the payment must be made on account of a sum admitted to be due, accompanied with a promise to pay the remainder; 6 M. & W. 824; 6 E. L. & Eq. 520; 20 Miss. 663; 7 Gray, 274.

Part payment by a surety in the presence of his principal, and without dissent, is payment by the principal; 2 Fost. 219; but part payment by the surety after the statute has barred the debt, is not a new promise to pay the other part; 18 B. Monr. 643. A general payment on account of a debt for which several notes were given, without direction as to the application of the payment, may be applied by the creditor to either of the notes, so as to take the note to which the payment is applied out of the statute; but the payment cannot be apportioned to the several notes with the same effect; 19 Vt. 26; 31 E. L. & Eq. 55; 1 Gray, 630. With respect to promissory notes and bonds, the general proof of part payment or of interest, is the indorsement thereon; 2 Stra. 826; 1 Ad. & E. 102; 9 Pick. 42; 42 Barb. 18; 17 Johns. 182. But it must be made *bona fide*, and with the privity of the debtor; 2 Campb. 321; 7 Wend. 408; 45 Mass. 578; 4 Leigh, 519.

The payment may be made to an agent, or even a stranger not authorized to receive it, but erroneously supposed to be authorized. It is as much an admission of the debt as if made to the principal himself; 1 Bingh. 480; 4 Tyrw. 94; 10 B. & C. 122. And so with reference to acknowledgments or new promises; 4 Pick. 110; 9 *id.* 488; 9 Wend. 293; 11 Me. 152; 21 Barb. 351; 36 Iowa, 576; 19 Ill. 189. And the weight of authority is in favor of the rule that part payment of a witnessed note or bond will avoid the statute; 30 Me. 164; 9 B. Monr. 438; 12 Mo. 94; 18 Ark. 521. Whether the new promise or payment, if made after the debt is barred by the statute, will remove the bar, is also a mooted point, the weight of authority perhaps being in favor of the negative; 14 Pick. 387; 10 Ala. N. S. 959; 13 Miss. 564; 2 Comst. 523; 2 Kern. 635; 13 La. An. 353, 635; 14 Ark. 199. In Ohio it is so, by statute; 17 Ohio, 9. For the affirmative, see 18 Vt. 440; 20 Me. 176; 5 Ired. 341; 2 Tex. 501; 8 Humphr. 656; 47 Penn. 333; 9 Penn. 258; 6 Barb. 583.

It was long held that an acknowledgment or part payment by one of several joint-contractors would take the claim out of the statute as to the other joint-contractors; 2 Dougl. 652; 2 H. Blackst. 340; and such is the law in some parts of the Union; 4 Pick. 382; 25 Vt. 390; 19 Conn. 37; 1 R. I. 88; 3 Munf. 240; 1 M'Cord, 541; 7 Ired. 513; 30 Me. 310; 45 Miss. 367; 18 N. Y. 559. But in the courts of the United States and New Hampshire, South Carolina, Tennessee, Indiana, Delaware, Pennsylvania, and some other states, the contrary rule prevails; 8 Cra. 721; 1 Pet. 351; 6 N. H. 124; 7 Yerg. 534; 1 M'Mullin, 297; 12 Md. 223; 17 S. & R. 126; 41 Ala. 222.

Of course an acknowledgment or part payment made by an agent acting within the scope of his authority is, upon the familiar maxim, *qui facit per alium facit per se*, an acknowledgment or part payment by the principal; and hence if a partner has been appointed specially to settle the affairs of a dissolved partnership, his acknowledgment or part payment by virtue of his authority as such agent will take the claim out of the statute; 6 Johns. 267; 1 Pet. 351; 20 Me. 347; 3 S. & R. 345. And the wife may be such agent as to a claim for goods sold to her during the absence of her husband; 1 Campb. 394; 3 Bing. 119; but a wife during coverture, not made specially or by implication of law an agent, cannot make a new promise effectual to take a claim to which she was a party *dum sola* out of the statute; 1 B. & C. 248; 24 Vt. 89; 12 E. L. & Eq. 398; not even though the coverture be removed before the expiration of six years after the alleged promise; 2 Penn. 490.

Nor is the husband an agent for the wife for such a purpose; 15 Vt. 471; but he is an agent for the wife, payee of a note given to her *dum sola*, to whom a new promise or part payment may be made; 6 Q. B. 937. So a new promise to an executor or administrator is sufficient; 8 Mass. 134; 17 Johns. 330; 7 Coms. 179; and the weight of authority seems to be in favor of the binding force of a promise or part payment made by an executor or administrator; 12 Cush. 324; 12 B. Monr. 408; 9 Ala. 502; 17 Ga. 96; 9 E. L. & Eq. 80; 10 Md. 242; 4 B. Monr. 36; particularly if the promise be express; 15 Johns. 3; 15 Me. 360; 36 N. J. L. 44. But there are highly respectable authorities to the contrary; 1 Whart. 71; 7 Ind. 442; 9 Md. 317; 14 Tex. 312; 35 Penn. 259; 11 Sm. & M. 9; 7 Conn. 172; see 12 Wheat. 565.

To put an end to all litigation in England as to the effect of a new promise or acknowledgment, it was enacted by stat. 9 Geo. IV. c. 14, commonly known as Lord Tenderden's Act, that the new promise or acknowledgment by words only, in order to be effectual to take a case out of the statute of limitations, should be in writing, signed by the party chargeable thereby; and this statute has been

substantially adopted by most, if not all, of the states in this country. This statute affects merely the mode of proof. The same effect is to be given to the words reduced to writing as would before the passage of the statute have been given to them when proved by oral testimony; 7 Bingh. 163. If part payment is alleged, "words only," admitting the fact of payment, though not in writing, are admissible to strengthen the proof of the fact of payment; 2 Gale & D. 59. See Ang. Lim. § 298 *et seq.*

Lord Tenderden's Act has been re-enacted substantially in Maine, Massachusetts, Vermont, Virginia, and Wisconsin. In construing these statutes it has been held that the return, under citation, by an administrator of the maker of a note, showing the note as one of his intestate's debts, is, in writing, within the meaning of this statute; 12 Sim. 17; and so is the entry by an insolvent debtor of the debt in his schedule of liabilities; 12 Metc. 470. It was held in the last case that the mere entry was not in itself a sufficient acknowledgment, but being in writing, within the meaning of the statute, it might be used with other written evidence to prove a new promise. But the making one note and tendering it in payment of another is not a new promise in writing; 3 Cush. 355; not even if the note be delivered, if it be re-delivered to the maker for the purpose of restoring matters between the parties to the state they were in before the note was given; 1 Metc. 394.

A and B had an unsettled account. In 1845, A signed the following: "It is agreed that B, in his general account, shall give credit to A for £10, for books delivered in 1834." Held, no acknowledgment in writing, so as to give B a right to an account against A's estate more than six years before A's death; 35 E. L. & Eq. 195. The writing must be signed by the party himself. The signature of the husband's name by the wife, though at his request, is not a signing by the party to be charged; 2 Bingh. N. C. 776. Nor is the signature by a clerk sufficient; 8 Scott, 147. Nor is a promise in the handwriting of the defendant sufficient; it must be signed by him; 12 Ad. & E. 493. And a request by the defendant to the plaintiff to get certain moneys due the defendant from third parties, does not charge the party making the request, because it is not apparent that the defendant intended to render himself personally liable; 8 Ad. & E. 221; 5 C. & P. 209. Since this statute, mutual accounts will not be taken out of the operation of the statute by any item on either side, unless the item be the subject of a new promise in writing; 2 Cro. M. & R. 45; 116 Mass. 529. The effect of part payment is left by the statute as before; 10 B. & C. 122. And the fact of part payment, it is now held, contrary to some earlier cases, may be proved by unsigned written evidence; 4 E. L. & Eq. 514; or by oral testimony; 9 Metc. 482.

AS TO REAL PROPERTY AND RIGHTS.

The general if not universal limitation of the right to bring action or to make entry, is to twenty or twenty-one years after the right to enter or to bring the action accrues, *i. e.* to twenty or twenty-one years after the cause of action accrues. As the rights and interests of different parties in real property are various, and attach at different periods, and successively, it follows that there may be a right of entry in a particular person, accruing after the expiration of antecedent rights at a period from the beginning of the adverse possession, much exceeding twenty or twenty-one years.

Thus, if an estate be limited to one in tail, and the tenant in tail be barred of his remedy by the statute, yet, as the statute only affects the remedy, and the right or estate still exists, the right of entry in the remainder-man does not accrue until the failure of the issue of the tenant in tail, which may not happen for many years. The estate still existing in the tenant in tail or his issue supports and keeps alive the remainder-man's right of action till the expiration of twenty years after his right of entry accrues; 1 Burr. 60; 3 Binn. 374; 1 Salk. 339; 5 Bro. P. C. 689; Price, Lim. & Liens, 129; 15 Mass. 471.

The laches of the owner of a prior right in an estate cannot prejudice the owner of a subsequently accruing right in the same estate; 4 Johns. 390; 3 Cruise, Dig. 403; 2 Stark. Ev. 887. And where there exist two distinct rights of entry in the same person, he may claim under either. He is not obliged to enter under his earlier right; 1 Pick. 318; 5 C. & P. 563; 29 Ga. 355; 2 Gill & J. 173.

Where it is necessary to prove that an actual entry has been made upon the land within a certain time before bringing suit, such entry must be proved to have been made upon the land in question; 13 East, 489; 3 Me. 316; Doug. 477; 4 Cra. 367; 11 Gill & J. 283; unless prevented by force or fraud, when a *bona fide* attempt is equivalent; 4 Johns. 389. If the land lie in two counties, there must be an entry in each county; though if the land be all in one county an entry upon part, with a declaration of claim to the whole, is sufficient; Co. Litt. § 419; 3 Johns. Cas. 115. The intention to claim the land is essential to the sufficiency of the entry; and whether this intention has existed is to be left in each case to the jury; 9 Watts, 567; 4 Wash. C. C. 367; 21 Ga. 113; 9 Watts, 28; 27 Ala. 364. An entry may be made by the guardian for his ward, by the remainder-man or reversioner for the tenant, and the tenant for the reversioner or remainder-man, being parties having privity of estate; 9 Co. 106; 2 Penn. 180. So a *cestui que trust* may enter for his trustee; 1 Ld. Raym. 716; and an agent for his principal; 11 Penn. 212; even without original authority, if the act be adopted and ratified; 9 Penn. 40. And the entry of one joint-tenant, coparcener, or ten-

ant in common will inure to the benefit of the other; 10 Watts, 296.

Adverse possession for the necessary statutory period gives title against the true owner; but it must be open, uninterrupted, and with intent to claim against the true owner. The possession must be an actual occupation, so open that the true owner ought to know it and must be presumed to know it, and in such manner and under such circumstances as amount to an invasion of his rights, thereby giving him cause of action; 11 Gill & J. 371; 5 Cow. 219; 2 Penn. 438; 9 Cush. 476; 13 Allen, 408; 5 Pet. 438; 4 Wheat. 230; 12 S. & R. 334; in Pennsylvania this rule has been announced with special distinctness. "The owner of land," says the supreme court in 1 Watts, 341, "can only be barred by such possession as has been actual, continued, visible, notorious, distinct, and hostile or adverse."

It must be *open*, so that the owner may know it or might know of it. Many acts of occupation would be unequivocal, such as fencing the land or erecting a house on it; 7 Wheat. 59; 5 Pet. 402; actual improvement and cultivation of the soil; 1 Johns. 156; building on land and putting a fence around it; 6 Pick. 172; digging stones and cutting timber from time to time; 14 East, 332; 6 S. & R. 21; driving piles into the soil covered by a mill-pond, and thereon erecting a building; 6 Mass. 229; cutting roads into a swamp, and cutting trees and making shingles therefrom; 1 Ired. 56; and setting fish-traps in a non-navigable stream, building dams across it, and using it every year during the entire fishing-season for the purpose of catching fish; 1 Ired. 535; but entering upon uninclosed flats, when covered by the tide, and sailing over them with a boat or vessel for the ordinary purposes of navigation, is not an adverse possession; 1 Cush. 395; though the filling up the flats, and building a wharf there, and using the same, would be if the use were exclusive; 1 Cush. 313; 10 Bosw. 249; nor is the entering upon a lot and marking its boundaries by splitting the trees; 14 N. H. 101; nor the getting rails and other timber for a few weeks each year from timber-land; 4 Jones, 295; nor the overflowing of land by the stoppage of a stream; 4 Dev. 158; nor the survey, allotment, and conveyance of a piece of land, and the recording of the deed; unless there is open occupation; 22 Me. 29. As a rule the nature of the acts necessary to constitute adverse possession varies with the region and character of the ground. If the latter is uncultivated and the region sparsely populated, much less unequivocal acts are necessary on the part of the adverse holder.

It must be *continuous* for the whole period. If one trespasser enters and leaves, and then another trespasser, a stranger to the former and without purchase from or respect to him, enters, the possession is not continuous; 2 S. & R. 240; 34 Penn. 38; 17 How. 601; 4 Md. 143; 30 Mo. 99; 20 Pick. 465; 10 Johns. 475. But a slight connection of the latter with the former trespasser, as by a purchase by parol contract, will be sufficient to give the possession continuity; 6 Penn. 355; 1 Meigs, 613; 31 Me. 583; 22 Ohio St. 42; 1 Term, 448. And so will a purchase at a sale or execution; 5 Penn. 126; 24 How. 284. To give continuity to the possession by successive occupants, there must be privity of estate; 5 Metc. Mass. 15; Ang. Lim. § 414; and such a privity that each possession may be referred to one and the same entry: as that of a tenant to his landlord, or of the heir of a disseisor to his ancestor; 1 Rice, 10.

So an administrator's possession may be connected with that of his intestate; 11 Humphr. 457; and that of a tenant holding under the ancestor, with that of the heir; Cheeves, 200. In some states, however, it is held that whether the possession be held uniformly under one title, or at different times under different titles, can make no difference, provided the claim of title is always adverse; as in Connecticut; 3 Day, 269; and in Kentucky; 1 A. K. Marsh. 4.

The possession must be *adverse*. If it be permissive; 2 Jac. & W. 1; or by mistake; 3 Watts, 280; or unintentional; 11 Mass. 296; or confessedly in subordination to another's right; 5 B. & Ald. 223; 9 Wheat. 241; 4 Wend. 558; 6 Penn. 210; 9 Metc. 418; 8 Shepl. 240; 10 B. & C. 866; 2 Ad. & E. 520; 12 East, 141; it does not avail to bar the statute. If the occupation is such and by such a person that it may be for the true owner, it will be presumed to be for him, unless it be shown that the adverse claimant gave notice that he held adversely and not in subordination; 1 Batt. Ch. 373; 5 Burr. 2604. And this notice must be clear and unequivocal. If the act of the tenant or adverse claimant may be a trespass as well as a disseisin, the true owner may elect which he will consider it, regardless of the wishes of the trespasser, who cannot be allowed to qualify his own wrong; 1 Burr. 60–107; 3 Pick. 575; 12 Mass. 325; 4 Mas. 329.

So that if the adverse claimant sets up his trespasses as amounting to an adverse possession, the true owner may reply they are no disseisin, but trespasses only; while, on the other hand, the true owner may elect, if he please, for the sake of his remedy, to treat them as a disseisin; 19 Me. 383; 8 N. H. 67. This is called a disseisin by election, in distinction from a disseisin in fact,—a distinction which was taken for the benefit of the owner of the land Whenever the act done of itself necessarily works an actual disseisin, it is a disseisin in fact: as, when a tenant for years or at will conveys in fee. On the other hand, those acts which are susceptible of being made a disseisin by election are no disseisin till the election of the owner makes them so; 1 Johns. Cas. 36.

The claim by adverse possession must have some definite boundaries; 1 Metc. Mass. 528; 10 Johns. 447; 10 S. & R. 334; 4 Vt. 155; 3 H. & S. 13. There ought to be something

to indicate to what extent the adverse possessor claims. A sufficient inclosure will establish the limits, without actual continued residence on the land; 3 S. & R. 291; 14 Johns. 405; 3 H. & M'H. 595; 10 Mass. 93; 4 Wheat. 213. But it must be an actual, visible, and substantial inclosure; 7 N. H. 436; 2 Aik. 364; 4 Bibb, 455. An inclosure on three sides, by a trespasser as against the real owner, is not enough; 8 Me. 239; 5 Md. 256; nor is an unsubstantial brush fence; 10 N. H. 397; nor one formed by the lapping of fallen trees; 3 Metc. Mass. 125; 2 Johns. 230. And where the claim is by possession only, without any color or pretence of title, it cannot extend beyond the actual limits of the inclosure; 3 H. & M'H. 621; 5 Conn. 305; 28 Vt. 142; 6 Ind. 273. And this must be fixed, not roving from part to part; 11 Pet. 53.

Extension of the inclosure within the time limited will not give title to the part included in the extension; 2 H. & J. 391; 8 Ill. 238.

Where, however, the claim rests upon color of title as well as possession, the possession will be regarded as coextensive with the powers described in the title-deed; 11 Pet. 41; 3 Mas. 330; 3 Ired. 578; 2 Ill. 181; 13 Johns. 406; 5 Dana, 232; 4 Mass. 416; 23 Cal. 431; unless the acts or declarations of the occupant restrict it. But the constructive possession of land arising from color of title cannot be extended to that part of it whereof there is no actual adverse possession, whether with or without a proper title; 28 Penn. 124; 16 B. Monr. 472; 7 Watts, 442; nor will a subsequent conflicting possession, whether under color of title or not, be extended by construction beyond the limits of the actual adverse possession for the purpose of defeating a prior constructive possession; 6 Cow. 677; 11 Vt. 521. Nor can there be any constructive adverse possession against the owner when there has been no actual possession which he could treat as a trespass and bring suit for; 3 Rich. 101. A trespasser who afterwards obtains color of title can claim constructively only for the time when the title was obtained; 16 Johns. 293.

This doctrine of constructive possession, however, applies only to land taken possession of for the ordinary purpose of cultivation and use, and not to a case where a few acres are taken possession of in an uncultivated township for the mere purpose of thereby gaining title to the entire township; 22 Vt. 388; 1 Cow. 286; 6 B. Monr. 463; 14 Vt. 400.

In fine, with a little relaxation of strictness in the case of wild, remote, and uncultivated lands, the sort of possession necessary to acquire title is adverse, open, public, and notorious, and not clandestine and secret; possession, exclusive, uninterrupted, definite as to boundaries, and fixed as to its locality.

Color of title is any thing in writing, however defective, connected with the title, which serves to define the extent of the claim; 2 Caines, 183; 21 How. 493; 30 Ill. 279; 34 Wisc. 425; 16 N. H. 374; 19 Ga. 8; and it may exist even without writing, if the facts and circumstances show clearly the character and extent of the claim; 17 Ill. 498; Ang. Lim. § 404, note.

A fraudulent deed, if accepted in good faith, gives color of title; 8 Pet. 244; so does a defective deed; 4 H. & M'H. 222; 6 Wisc. 527; unless defective in defining the limits of the land; 1 Cow. 276; so does an improperly executed deed, if the grantor believes he has title thereby; 6 Metc. 337; so does a sheriff's deed; 7 B. Monr. 236; 22 Ga. 56; 7 Hill, 476; and a deed from a collector of taxes; 4 Ired. 164; 24 Ill. 577; unless defective on its face; 29 Wisc. 256; and a deed from an attorney who has no authority to convey; 2 Murph. 14; 28 N. Y. 9; and a deed founded on a voidable decree in chancery; 1 Meigs, 207; and a deed, by one tenant in common, of the whole estate, to a third person; 4 D. & B. 54; 2 Head, 674; and a deed by an infant; 4 D. & B. 289.

So possession, in good faith, under a void grant from the state, gives color of title; 4 Ga. 115. And if A purchases under an execution against B, takes a deed, and on the same day conveys to B, though the purchase and conveyance be at the request of B, and no money is paid, B has a colorable title; 4 D. & B. 201; 7 Humphr. 367. A will gives color of title; but if it has but one subscribing witness, and has never been proved, it does not; 5 Ired. 711. Nor does the sale by an administrator of the land of his solvent intestate, under a license of the probate court, unless accompanied by a deed from the administrator; 34 N. H. 544; 13 Md. 105. Nor does the sale of property by an intestate to his son, of which the possession is held by the wife, who is administratrix, while the son lives in the family, as against the intestate's creditors; 30 Miss. 472.

If there is no written title, then the possession must be under a *bonâ fide* claim to a title existing in another; 3 Watts, 72. Thus, if under an agreement for the sale of land the consideration be paid and the purchaser enter, he has color of title; 5 Metc. Mass. 173; 10 Fost. 531; 37 Miss. 138; 36 Ala. 308; 2 Strobh. 24; 12 Tex. 195; 17 Ga. 600; though if the consideration be not paid, or be paid only in part, he has not; 2 Bail. 59; 11 Ohio, 455; 20 Ga. 311; 2 Dutch. 351; because the fair inference in such case is that the purchaser is in by consent of the grantor, and holds subordinately to him until the payment of the full consideration. There is, in fact, a mutual understanding, and a mutual confidence, amounting to an implied trust; 9 Wheat. 241; 12 Mass. 325; 1 Wash. C. C. 207; 1 Spear, 291.

In New York, a parol gift of land is said not to give color of title; 1 Johns. Cas. 36; but it is at least doubtful if that is the law of New York; 6 Cow. 677; and in Massachusetts and other states, a parol gift is held to

give color of title if accompanied by actual entry and possession. It manifests, equally with a sale, the intent of the donee to enter, and not as tenant; and it equally proves an admission on the part of the donor that the possession is so taken; 6 Metc. 337; 13 Conn. 227; 2 B. Monr. 282; 39 Conn. 98; 4 Allen, 425; 32 N. J. 239; but see, *contra*, 24 Ga. 494. The element of good faith, and the actual belief on the part of the claimant that he has title, give the claimant by color of title his advantage over the mere trespasser, who, as we have seen, is restricted carefully to his actual occupation; and it may be said, generally, that whenever the facts and circumstances show that one in possession, in good faith and in the belief that he has title, holds for himself and to the exclusion of all others, his possession must be adverse, and according to his assumed title, whatever may be his relations in point of interest or priority, to others; 5 Pet. 440; 1 Paine, 467; 11 Pet. 41. When a man enters under such a claim of title, his entry on a part is an entry on the whole; but if he claims no such title he has no seisin by his entry but by the ouster of him who was seised, which can only be by the actual and exclusive occupation of the land; 4 Mass. 416.

In cases of mixed possession, or a possession at the same time by two or more persons, each under a separate colorable title, the seisin is in him who has the better or prior title; 4 Wheat. 213; 20 How. 235; 3 Wend. 149; for, though there may be a concurrent possession, there cannot be a concurrent seisin; and, one only being seised, the possession must be adjudged to be in him, because he has the better right; 3 Mass. 219; 10 Mass. 151; 3 S. & R. 509; 1 D. & B. 5. Of course, in such a case, if one has color of title, and the other is a mere trespasser or intruder, the possession is in him who has color of title; 2 Harr. & J. 112; 4 S. & R. 465; 5 Du. 272.

But, with all the liberality shown by the courts in giving color of title, it has been denied that a grant from a foreign government confers it, on the ground that the possession under such a title was rather a question between governments than individuals; 3 H. & McH. 621. Thus, the courts of New York have refused to recognize claims under a grant of the French government in Canada, made prior to the treaty between Great Britain and France in 1763; 4 Johns. 163; 12 *id.* 365; as conferring color of title. But the soundness of the exception has since been questioned in the same court; 8 Cow. 589; and the grant of another state has been expressly held to give color of title in Pennsylvania, even as against one claiming under her own grant; 2 Watts, 37. For political reasons, it has been held that a grant from the Indians gives no color of title; 8 Wheat. 571.

One joint-tenant, tenant in common, or *coparcener* cannot dismiss another but by actual ouster, as the seisin and possession of one are the seisin and possession of all, and inure to the benefit of all; 2 Salk. 422; 7 Wheat. 59; 12 Metc. 357; 11 Gratt. 505; 3 S. & R. 381; 4 Day, 473; 3 Grant, Cas. 247; actual ouster implies exclusion or expulsion. No force is necessary; but there must be a denial of the right of the co-tenant; Cowp. 217; 5 Burr. 2604; 9 Cow. 530; 22 Tex. 663; 1 Me. 89; 12 Wend. 404; and, like a grant, after long lapse of time it may be presumed; 1 East, 568; 3 Metc. 101; 29 Wisc. 226; and inferred from acts of an unequivocal character importing a denial; 3 Watts, 77; 1 Me. 89; 3 A. K. Marsh. 77; but the possession of the grantee of one tenant in common is adverse to all; 13 B. Monr. 436; 3 Metc. 101; 4 Paige, Ch. 178.

The possession of the tenant is likewise the possession of his landlord, and cannot be adverse unless he distinctly renounce his landlord's title; 2 Campb. 11; 2 Binn. 468; 10 N. Y. 9; 3 Pet. 43; 6 Watts, 500.

Mere non-payment of rent during the time limited, there having been no demand, does not prejudice the landlord's right to enter and demand it, even though the lease contains a clause giving the right of re-entry in case of non-payment of rent; 5 Cow. 123; 7 East, 299; and payment of rent is conclusive evidence that the occupation of the party paying was permissive and not adverse; 3 B. & C. 135; 12 L. J. N. S. Q. B. 236. The defendant in execution after a sale is a quasi tenant at will to the purchaser; and his possession is not therefore adverse; 1 Johns. Cas. 153; 3 Mass. 128. And a mere holding over after the expiration of a lease does not change the character of the possession; 2 Gill & J. 173. Nor does the assignment of the lease, or a sub-letting. The assignee and sub-lessees are still tenants, so far as the title by adverse possession is concerned; 4 S. & R. 467; 3 Pet. 43; 6 Cow. 751.

If the tenant convey the premises, as we have before seen, the landlord may treat the grantee as a disseisor by election; but the grantee cannot set up the act as the basis of a title by adverse possession; 5 Cow. 123; unless in the case where the relation of landlord and tenant subsists by operation of law; as where one makes a grant and by the omission of the word "heirs" an estate for life only passes. In such case, after the death of the tenant for life an adverse possession may commence; 7 Cow. 323. So in case the tenant has attorned to a third person and the landlord has assented to the attornment; 6 Cow. 133; 4 How. 289; 10 Sm. & M. 440; 4 Gilm. 336. But a mere parol disclaimer, by the lessor, of the existence of the relationship, and of all right in the premises, is not equivalent to an attornment. To admit such disclaimer would lead to fraud and perjury, and is in direct violation of the principles of the Statute of Frauds; 7 Johns. 186; 16 *id.* 305; 5 Cow. 74; but see 13 S. & R. 133.

The *possession of the mortgagor* is not adverse to the mortgagee (the relation being

in many respects analogous to that of landlord and tenant); 3 Pet. 43; 4 Cra. 415; 11 Mass. 125; 30 Miss. 49; 27 Penn. 504; Dougl. 275; not even if the possession be under an absolute deed, if intended as a mortgage; 19 How. 289. The relation of mortgagor and mortgagee is very peculiar and *sui generis*. It is sometimes like a tenancy for years; Cro. Jac. 659; sometimes like a tenancy at will; Dougl. 275; and sometimes like a tenancy at sufferance; 1 Salk. 245; but, whatever it may be like, it is always presumed to be by permission of the mortgagor until the contrary be shown. The assignee of the mortgagor, with notice, is in the same predicament with the mortgagor; but if he purchase without notice, and particularly if the mortgage be forfeited at the date of his purchase; his possession will be adverse; 2 Car. L. R. 614; 19 Vt. 526; 6 B. Mon. 479; 2 Sandf. 636; 34 Mo. 285; 32 Miss. 312; 19 How. 289.

But, although the possession of the mortgagor be not adverse so as to give title under the statute against the mortgagee, the courts have nevertheless practically abrogated this rule, by holding that where the mortgagor has held during the statutory limit, and has meantime paid no interest nor otherwise recognized the rights of the mortgagee, this raises a presumption that the debt has been paid, and is a good defence in an action to foreclose; 12 Johns. 242; 9 Wheat. 497; 8 Metc. 87. And the reasons for so holding seem to be equally cogent with those upon which rests the well-settled rule that, with certain exceptions, the mortgagee's possession for the time limited bars the mortgagor's right to redeem; 2 J. & W. 434; 6 E. L. & Eq. 355; 1 Johns. Ch. 385; 9 Wheat. 489; 3 Harr. & M'H. 328; 2 Sumn. 401; 13 Ala. 246; 20 Me. 269.

The exceptions to this rule are—*first*, where an account has been settled within the limited time; 2 Vern. 377; 5 Bro. C. C. 187; 5 Johns. Ch. 522; *second*, where within that time the mortgagee, by words spoken or written, or by deed, has clearly and unequivocally recognized the fact that he held as mortgagee; 2 Bro. 397; 1 Sim. & Stu. 347; 1 Johns. Ch. 594; 10 Wheat. 152; 3 Sumn. 160; by which recognition a subsequent purchaser, with actual or constructive notice of the mortgage, is barred; 7 Paige, Ch. 465; *third*, where no time is fixed by payment, as in the case of a mortgage where the mortgagee is by agreement to enter and hold till he is paid out of the rents and profits; 1 Vt. 418; *fourth*, where the mortgagor continues in possession of the whole or any part of the premises; Sel. Ca. in Ch. 55; 1 Johns. Ch. 594; 1 Neb. 342; and, *fifth*, where there is fraud on the part of the mortgagee, or at the time of the inception of the mortgage he has taken advantage of the necessities of the mortgagor; 1 Johns. Cas. 402, 595; 2 Cruise, 161.

The trustee of real estate, under a direct trust, as well as of personal, as we have seen, holds for his *cestui que trust*, and the latter is not barred of his right unless it be denied and repudiated by the trustee; in which case the statute will begin to run from the denial or repudiation; 5 How. 233; 3 Gray, 1; 2 M'Lean, 376. In cases of implied construction and resulting trusts, the rule is also the same as with reference to personal property. The statute is a bar even in cases where the conduct of the trustee was originally fraudulent; 5 Johns. Ch. 184; 17 Ves. 151; 2 Bro. C. C. 438.

The same general rules as regards *persons under disabilities* apply in cases of real estate as have already been described as applicable to personalty at the time the right descends or the cause of action accrues, and prevent the running of the statute, till their removal; but only such as exist at that time. When the statute once begins to run, no subsequent disability can stop it; 1 How. 37; 4 Mass. 182; 16 Johns. 513; 1 Wheat. 292; 2 Binn. 374; and there is no distinction in this respect between voluntary and involuntary disabilities; 4 Term, 301; 3 Brev. 286. The disability of one joint-tenant, tenant in common, or coparcener does not inure to the benefit of the other tenants; 8 Johns. 262, 265; 2 Taunt. 441; 10 Ohio, 11; 10 Ga. 218; 5 Humphr. 117; 4 Strobh. Eq. 167; 13 S. & R. 350.

It would be wholly impracticable here to give a compend, or even an analysis, of the different statutes of the several states. Nor, indeed, would such an analysis be of much service, as, from frequent revision, changes, and modifications, what is the law to-day might not be the law to-morrow, and it could not be referred to, therefore, as a reliable index of the actual state of the law in any particular state. As, however, the statutes of the several states are substantially and in principle the same, differing only in immaterial details, and as all are derived directly or indirectly from the same source, it will doubtless prove both convenient and useful to be able to refer to the text of the original English statutes which have been the occasion of so much comment. These are, accordingly, appended, except Stat. 3 & 4 Will. IV. c. 27, of which there is room only for a synopsis.

Statute 21 *James I. c.* 16.

For quieting of men's estates, and avoiding of suits, be it enacted, etc., that all writs of formedon in descender, formedon in remainder, and formedon in reverter, at any time hereafter to be sued or brought, of or for any manors, lands, tenements, or hereditaments, whereunto any person or persons now hath or have any title, or cause to have or pursue any such writ, shall be sued or taken within twenty years next after the end of this present session of parliament: and after the said twenty years expired, no person or persons, or any of their heirs, shall have or maintain any such writ, of or for any of the said manors, lands, tenements, or hereditaments; (2) and that all writs of formedon in descender, formedon in remainder, formedon in reverter, of any manors, lands, tenements, or other hereditaments

whatsoever, at any time hereafter to be sued or brought by occasion or means of any title or cause hereafter happening, shall be sued or taken within twenty years next after the title and cause of action first descended or fallen, and at no time after the said twenty years; (3) and that no person or persons that now hath any right or title of entry into any manors, lands, tenements, or hereditaments now held from him or them, shall thereinto enter but within twenty years next after the end of this present session of parliament, or within twenty years next after any other title of entry accrued; (4) and that no person or persons shall at any time hereafter make any entry into any lands, tenements, or hereditaments, but within twenty years next after his or their right or title, which shall hereafter first descend or accrue to the same; and in default thereof, such persons so not entering, and their heirs, shall be utterly excluded and disabled from such entry after to be made, any former law or statute to the contrary notwithstanding.

II. Provided, nevertheless, That if any person or persons that is or shall be entitled to such writ or writs, or that hath or shall have such right or title of entry, be, or shall be, at the time of the said right or title first descended, accrued, come or fallen within the age of one-and-twenty years, *feme covert*, *non compos mentis*, imprisoned, or beyond the seas, that then such person and persons, and his and their heir and heirs, shall or may, notwithstanding the said twenty years be expired, bring his action or make his entry as he might have done before this act: (2) so as such person and persons, or his or their heir and heirs, shall, within ten years next after his and their full age, discoverture, coming of sound mind, enlargement out of prison, or coming into this realm, or death, take benefit of and sue forth the same, and at no time after the said ten years.

III. And be it further enacted, That all actions of trespass *quare clausum fregit*, all actions of trespass, detinue, action *sur trover*, and replevin for taking away of goods and cattle, all actions of account, and upon the case, other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract without specialty, all actions of debt for arrearages of rent, and all actions of assault, menace, battery, wounding, and imprisonment, or any of them, which shall be sued or brought at any time after the end of this present session of parliament, shall be commenced and sued within the time and limitation hereafter expressed, and not after; (that is to say,) (2) the said actions upon the case (other than for slander), and the said actions for account, and the said actions for trespass, debt, detinue, and replevin for goods or cattle, and the said action of trespass *quare clausum fregit*, within three years next after the end of this present session of parliament, or within six years next after the cause of such actions or suit, and not after; (3) and the said action of trespass, of assault, battery, wounding, imprisonment, or any of them, within one year next after the end of this present session of parliament, or within four years next after the cause of such actions or suit, and not after; (4) and the said action upon the case for words, within one year after the end of this present session of parliament, or within two years next after the words spoken, and not after.

IV. And, nevertheless, be it enacted, That if in any the said actions or suits, judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment the judgment be given against the plaintiff, that he take nothing by his plaint, writ, or bill; or if any the said actions shall be brought by original, and the defendant therein be outlawed, and shall after reverse the outlawry, that in all such cases the party plaintiff, his heirs, executors, or administrators, as the case shall require, may commence a new action or suit, from time to time, within a year after such judgment reversed, or such judgment be given against the plaintiff, or outlawry reversed, and not after.

V. And be it further enacted, That in all actions of trespass *quare clausum fregit*, hereafter to be brought, wherein the defendant or defendants shall disclaim in his or their plea to make any title or claim to the land in which the trespass is by the declaration supposed to be done, and the trespass be by negligence or involuntary, the defendant or defendants shall be admitted to plead a disclaimer, and that the trespass was by negligence or involuntary, and a tender or offer of sufficient amends for such trespass before the action brought, whereupon, or upon some of them, the plaintiff or plaintiffs shall be enforced to join issue; (2) and if the said issue be found for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited, the plaintiff or plaintiffs shall be clearly barred from the said action or actions, and all other suits concerning the same.

VI. And be it further enacted by the authority aforesaid, That in all actions upon the case for slanderous words, to be sued or prosecuted by any person or persons in any of the courts of record at Westminster, or in any courts whatsoever that hath power to hold plea of the same, after the end of this present session of parliament, if the jury upon the trial of the issue in such action, or the jury that shall inquire of the damages, do find or assess the damages under forty shillings, then the plaintiff or plaintiffs in such action shall have and recover only so much costs as the damages so given or assessed amount unto, without any farther increase of the same, any law, statute, custom, or usage to the contrary in any wise notwithstanding.

VII. Provided, nevertheless, and be it further enacted, That if any person or persons that is or shall be entitled to any such action of trespass, detinue, action *sur trover*, replevin, actions of account, actions of debt, actions of trespass for assault, menace, battery, wounding, or imprisonment, actions upon the case for words, be, or shall be, at the time of any such cause of action given or accrued, fallen or come within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned or beyond the seas, that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are before limited, after their coming to or being of full age, discovert, of sane memory, at large, and returned from beyond the seas, as other persons having no such impediment should have done.

Statute 9 *Geo. IV. c.* 14, *known as Lord Tenterden's Act. Sect.* 1. Whereas by an act passed in England in the twenty-first year of the reign of King James the First, it was among other things enacted that all actions of account and upon the case, other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract without specialty, and all actions of debt for arrearages of rent, should be commenced within three years after the end of the then present session of parliament, or within six years next after the cause of such actions or suit, and not after;

and whereas a similar enactment is contained in an act passed in Ireland in the tenth year of the reign of King Charles the First; and whereas various questions have arisen in actions founded on simple contract, as to the proof and effect of acknowledgments and promises offered in evidence for the purpose of taking cases out of the operation of the said enactments, and it is expedient to prevent such questions, and to make a provision for giving effect to the said enactments and to the intention thereof; Be it therefore enacted, etc., and by the authority of the same, that in actions of debt, or upon the case, grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the said enactments, or either of them, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing, to be signed by the party chargeable thereby; and that where there shall be two or more joint-contractors, or executors or administrations of any contractor, no such joint-contractor, executor, or administrator shall lose the benefit of the said enactments or either of them, so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them: Provided, always, that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever; Provided also, that in actions to be commenced against two or more such joint-contractors, or executors or administrators, if it shall appear at the trial or otherwise that the plaintiff, though barred by either of the said recited acts, or this act, as to one or more of such joint-contractors or executors or administrators, shall, nevertheless, be entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment, or promise or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff.

Sect. 2. If any defendant or defendants, in any action on any simple contract, shall plead any matter in abatement to the effect that any other person or persons ought to be jointly sued and issue be joined on such plea; and it shall appear at the trial that the action could not by reason of the said recited acts, or of this act, or of either of them, be maintained against the other person or persons named in such plea, or any of them, the issue joined on such plea shall be found against the party pleading the same.

Sect. 3. No indorsement or memorandum of any payment written or made after the time appointed for this act to take effect upon any promissory note, bill of exchange, or other writing, by or on the behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of either of the said statutes.

Sect. 4. That the said recited act, and this act, shall be deemed and taken to apply to the case of any debt on simple contract alleged by way of set-off on the part of any defendant, either by plea, notice, or otherwise.

Statute 3 & 4 *Will. IV. c.* 27. Section 1. The time within which actions to recover realty, etc., must be brought, is regulated by the statute 3 & 4 Will. IV. c. 27. By the first section of the act the meaning of the words in the act is defined; it enacts, *inter alia*, that the word "land" shall extend to manors, messuages and all other corporeal hereditaments whatsoever, and also to tithes (other than tithes belonging to a *spiritual or eleemosynary corporation sole*), and also to any share or interest in them, whether the same be a freehold or chattel interest, and whether they be of freehold, copyhold, or any other tenure; and that the word "rent" shall extend to all heriots, services, and suits for which a distress may be made, and to annuities charged upon land (except moduses or compositions belonging to a *spiritual or eleemosynary corporation sole*), and that the word "person" shall extend to a body politic, corporate, or collegiate, and to a class of creditors or other persons, as well as to an individual; and that the singular number shall embrace the plural, and the masculine gender the feminine.

Section 2 enacts that after the 31st day of December, 1833, no person shall make an entry or distress, or bring an action to recover *any land or rent, but within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued.*

Sections 3, 4, 5, 6, 7, 8, and 9, define the period from which the statute begins to run (where a party is not under disability), which may be thus briefly stated: viz., where the claimant was, in respect of the estate or interest claimed, himself once in possession or claims through a party who was once in possession of the property or in receipt of the rents or profits, the statute runs from the time when he was dispossessed, or discontinued such possession or receipts.

Where the claimant claims on the death of one who died in possession of the land or receipt of the rents or profits thereof, the statute runs from the time of the death, and this even in the case of an administrator, by section 6, which see, *post.*

Where the claimant derives his right under any instrument (other than a will), the statute runs from the time when under the instrument he was entitled to the possession.

In the case of remainders or reversions, the statute runs from the time when the remainder or reversion becomes an estate in possession.

Where the claimant claims by reason of a forfeiture or breach of condition, the statute runs from the time of the forfeiture incurred or breach of condition broken.

But section 4 provides *that when any right to make any entry or distress, or to bring any action to recover any land or rent, by reason of any forfeiture or breach of condition,* shall have first accrued in respect of any estate or interest in reversion or remainder, and the land or rent shall not have been recovered by virtue of such right, *the right to make an entry or distress, or bring an action* to recover such land or rent, *shall be deemed to have first accrued* in respect of such estate or interest *at the time when the same shall have become an estate or interest in possession,* as if no such forfeiture or breach of condition had happened.

And by section 8 it is provided that a right to make an entry or distress, or to bring an action to recover any land or rent, shall be deemed to have first accrued in respect of an estate or interest in reversion at the time at which the same shall have become an estate or interest in possession by the determination of any estate or estates in respect of which such land shall have been held, or the profits thereof, or such rent shall have been received, notwithstanding the person claiming such land, or some person through whom he claims, shall, at any time previously to the creation of the estate or estates which shall have determined, have been in possession or re-

ceipt of the profits of such land, or in receipt of such rent.

Section 6 enacts that, *for the purpose of this act, an administrator* claiming the estate or interest of the deceased person of whose chattels he shall be appointed administrator, *shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of letters of administration.*

In case of a tenancy from year to year (without lease in writing), the statute runs from the end of the first year *or* the last payment of rent (which shall *last* happen).

In case of a lease in writing reserving more than 20*s.* rent, if the rent be received by a party wrongfully claiming the land, subject to the lease, and no payment of the rent be afterwards made to the party rightfully entitled, the statute runs from the time when the rent was first so received by the party wrongfully claiming; and the party rightfully entitled has no further right on the determination of the lease.

In the case of a tenancy at will, the statute runs from the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, *at which time the tenancy at will shall be deemed to have determined.* But the clause provides that no mortgagor or *cestui que trust* shall be deemed a tenant at will, within the meaning of the act, to his mortgagee or trustee.

Section 10 enacts that no person shall be deemed to have been in possession of any land within the meaning of this act merely by reason of having made an entry thereon.

Section 11 enacts that no continual or other claim upon or near any land shall preserve any right of making an entry or distress, or of bringing an action.

Section 12 enacts that when any one or more of several persons entitled to any land or rent as coparceners, joint-tenants, or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land, or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons, or any of them.

Section 14 provides and enacts that when *any acknowledgment* of the title of the person entitled to any land or rent shall have been given *to him or his agent in writing signed by the person in possession or in receipt of the profits of such land, or in respect of such rent, then such possession or receipt* of or by the person by whom such acknowledgment shall have been given, *shall be deemed*, according to the meaning of this act, *to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right* of such last-mentioned person, or any person claiming through him, to make an entry or distress, or bring an action to recover such land or rent, *shall be deemed to have first accrued* at, and not before, the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given.

Section 15 gives a party claiming land or rent, of which he had been out of possession more than twenty years, five years from the time of passing the act within which to enforce his claim, where the possession was not adverse to his right or title at the time of passing the act.

By section 16, persons under disability of infancy, lunacy, coverture, or beyond seas, and their representatives, are to be allowed ten years from the termination of their disability or death to enforce their rights.

But by section 17, even though a person be under disability when his claim first accrues, he must enforce it within forty years, even though the disability continue during the whole of the forty years.

And by section 18 no further time is to be allowed for a succession of disabilities.

By section 20, when the right of any person to recover any land or rent to which he may have been entitled, or an estate or interest in possession, shall have been barred by time, any right in reversion, or otherwise, which such person may during that time have had to the same land or rent, shall also be barred, unless in the mean time the land or rent shall have been recovered by some person entitled to an estate which shall have taken effect after or in defeasance of such estate or interest in possession.

Section 22 enacts that when any tenant in tail shall have died before the bar as against him is complete, no person claiming an estate or interest, etc., which such tenant in tail might have barred, shall enforce his claim but within the period which the tenant in tail, had he lived, might have recovered.

Section 24 enacts that no suit in equity shall be brought after the time when the plaintiff, if entitled at law, might have brought an action.

Section 25 enacts that in cases of *express trust* the right of the *cestui que trust*, or any person claiming through him, shall be deemed to have first accrued at the time when the land or rent may have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only against such purchaser, or any person claiming through him.

Section 26 enacts that in case of fraud the right shall be deemed to have first accrued at the time when such fraud shall be, or with reasonable diligence might have been, discovered, but that nothing in that clause shall affect a *bona fide* purchaser for value, not assisting in, and, at the time he purchased, not knowing, and having no reason to believe, such fraud had been committed

Section 27 provides that the act shall not prevent the courts of equity refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring a suit may not be barred by the act.

Section 28 enacts that a mortgagor shall be barred by twenty years' possession of the mortgagee, unless there be an acknowledgment in writing.

Section 29 enacts that no land or rent shall be recovered by an ecclesiastical or eleemosynary corporation sole, but within the period during which two persons in succession shall have held the benefice, etc. in respect whereof such land or rent is claimed, and six years after a third person shall have been appointed thereto, if such two incumbencies and six years taken together shall amount to the full period of sixty years, but if they do not amount to sixty years, then during such further time in addition to the two incumbencies and six years as will make up the sixty years.

Section 35 enacts that the receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him (but subject to the lease), be deemed to be the receipt of the profits of the land for the purposes of this act.

Section 40 enacts that *money secured by mortgage, judgment, or lien, or otherwise, charged upon or payable out of any land or rent at law or in*

equity, or any legacy, shall not be recovered but within twenty years next after a present right shall have accrued to some person capable of giving a discharge for or releasing the same, unless there have been part payment in the meantime of principal or interest, or an acknowledgment in writing have been given, signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto, or his agent, in which case the time runs from such payment or acknowledgment, or the last of them, if more than one.

Section 41 enacts that no arrears of dower, or any damages on account of such arrears shall be recovered but within six years before commencement of action or suit.

Section 42 enacts that no arrears of rent, or of interest in respect of any money charged upon any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, shall be recovered but within six years next after the same became due, or next after an acknowledgement of the same in writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent, *except* where any prior mortgagee or incumbrancer shall have been in possession of the land mortgaged, or profits thereof, within one year next before any action or suit by a subsequent mortgagee or incumbrancer of the same land; in which case such subsequent mortgagee or incumbrancer may in such action or suit recover all arrears of interest which shall have become due during the time that the prior mortgagee or incumbrancer was in possession of the land or profits thereof.

Of Criminal Proceedings. The time within which indictments may be found, or other proceedings commenced, for crimes and offences, varies considerably in the different jurisdictions. In general, in all jurisdictions, the length of time is extended in some proportion to the gravity of the offence. Indictments for murder, in most, if not all, of the states, may be found at any time during the life of the criminal after the death of the victim. Proceedings for less offences are to be commenced within periods varying from ten years to sixty days. See Whart. Cr. Pl. & Pr. §§ 316–329.

Of Estates. A description either by express words or by intendment of law of the continuance of time for which the property is to be enjoyed, marking the period at which the time of enjoyment is to end; Prest. Est. 25.

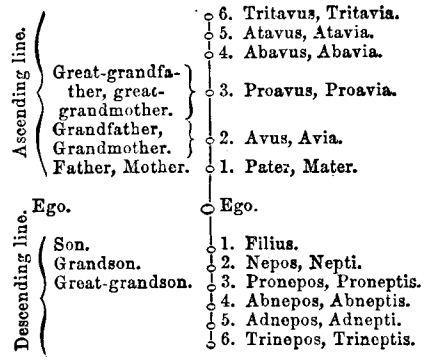
The definition or circumscription, in any conveyance, of the interest which the grantee is intended to take. The term is used by different writers in different senses. Thus, it is used by Lord Coke to denote the express definition of an estate by the words of its creation, so that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail; Co. Litt. 23 *b*. In the work of Mr. Sanders on Uses, the term is used, however, in a broader and more general sense, as given in the second definition above; 1 Sanders, Uses, 68–122. And, indeed, the same writers do not always confine themselves to one use of the term; see Fearne, Cont. Rem. Butler's note *n*, 9th ed. 10; 1 Steph. Com. 5th ed. 304, note. For the distinctions between limitations and remainders, see CONDITIONAL LIMITATION; CONTINGENT REMAINDER.

Consult, generally, Angell, Ballantine, Banning, Blanshard, Gibbons, Darby and Bonsanquet, Price, Wilkinson, on Limitations; Flintoff, Washburn, on Real Property; Barbour, Bishop, Wharton, on Criminal Law.

LIMITED COMPANY. A company in which the liability of each shareholder is limited by the number of shares he has taken, so that he cannot be called on to contribute beyond the amount of his shares. In England, the memorandum of association of such company may provide that the liability of the directors, manager, or managing director, thereof, shall be unlimited; 30 & 31 Vict. c. 131; 1 Lindl. Part. 383; Mozley & W. Dict.

LIMITED PARTNERSHIP. A form of partnership created by statute in many of the United States, wherein the liability of certain special partners, who contribute a specific amount of capital, is limited to the amount so contributed, while the general partners are jointly and severally responsible as in ordinary partnership. All the partners are liable as general partners, unless the statutes upon the subject are strictly, or as some cases say, substantially complied with; 5 Allen, 91; 39 Barb. 283; 3 Col. 342; 67 Penn. 330; 62 N. Y. 513; see 1 Lindley, Partn. 383, n.

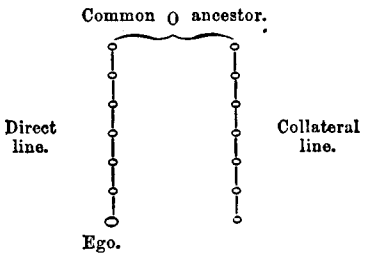
LINE. In Descents. The series of persons who have descended from a common ancestor, placed one under the other, in the order of their birth. It connects successively all the relations by blood to each other. See CONSANGUINITY; DEGREE.



The line is either direct or collateral. The direct line is composed of all the persons who are descended from each other. If, in the direct line, any one person is assumed as the *propositus*, in order to count from him upwards and downwards, the line will be divided into two parts, the ascending and descending lines. The ascending line is that which, counting from the *propositus*, ascends to his ancestors, to his father, grandfather, great-grandfather, etc. The descending line is that which, counting from the same person, de-

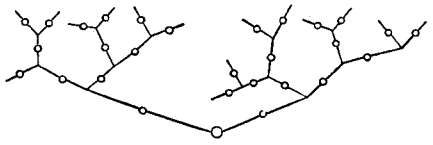
scends to his children, grandchildren, great-grandchildren, etc. The preceding table is an example.

The collateral line, considered by itself and in relation to the common ancestor, is a direct line; it becomes collateral when placed alongside of another line below the common ancestor, in whom both lines unite. For example:—



These two lines are independent of each other; they have no connection except by their union in the person of the common ancestor. This reunion is what forms the relation among the persons composing the two lines.

A line is also *paternal* or *maternal*. In the examination of a person's ascending line, the line ascends first to his father, next to his paternal grandfather, his paternal great-grandfather, etc., so on from father to father; this is called the paternal line. Another line will be found to ascend from the same person to his mother, his maternal grandmother, and so from mother to mother: this is the maternal line. These lines, however, do not take in all the ascendants; there are many others who must be imagined. The number of ascendants is double at each degree, as is shown by the following diagram:—



See 2 Bla. Com. 200, b.; Pothier, Des Successions, c. 1, art. 3, § 2; ASCENDANTS.

Estates. The division between two estates. Limit; border; boundary.

When a line is mentioned in a deed as ending at a particular monument (*q. v.*), it is to be extended in the direction called for, without regard to distance, until it reach the boundary; 1 Tayl. 110, 303; 2 *id.* 1; 2 Hawks, 219; 3 *id.* 21. And a marked line is to be adhered to although it depart from the course; 7 Wheat. 7; 2 Ov. 304; 3 Call. 239; 4 T. B. Monr. 29; 7 *id.* 333; 2 Bibb. 261; 4 *id.* 503. See, further, 2 Dan. 2; 6 Wend. 467; 3 Murph. 82; 13 Pick. 145; 13 Wend. 300; 5 J. J. Marsh. 587.

Where a number of persons settle simultaneously or at short intervals in the same neighborhood, and their tracts, if extended in certain directions, would overlap each other, the settlers sometimes by agreement determine upon dividing lines, which are called *consentible lines*. These lines, when fairly agreed upon, have been sanctioned by the courts; and such agreements are conclusive upon all persons claiming under the parties to them, with notice, but not upon *bonâ fide* purchasers for a valuable consideration, without notice, actual or constructive; 3 S. & R. 323; 5 *id.* 273; 17 *id.* 57; 9 W. & S. 66.

Lines fixed by compact between nations are binding on their citizens and subjects; 11 Pet. 209; 1 Ov. 269; 1 Ves. Sen. 450; 1 Atk. 2; 2 *id.* 592; 1 Ch. Cas. 85; 1 P. Wms. 723-727; 1 Vern. 48; 1 Ves. 19; 2 *id.* 284; 3 S. & R. 331.

Measures. A line is a lineal measure, containing the one-twelfth part of an inch.

LINEA RECTA (Lat.). The perpendicular line; the direct line. The line of ascent, through father, grandfather, etc., and of descent, through son, grandson, etc.; Co. Litt. 10, 158; Bracton, fol. 67; Fleta, lib. 6, c. 1, § 11. This is represented in a diagram by a vertical line.

Where a person springs from another immediately, or mediately through a third person, they are said to be in the direct line (*linea recta*), and are called ascendants and descendants. Mackeldey, Civ. Law, § 129.

LINEA TRANSVERSALIS (Lat.). A line crossing the perpendicular lines. Where two persons are descended from a third, they are called collaterals, and are said to be related in the collateral line (*linea transversa* or *obliqua*).

LINEAL. In a direct line.

LINEAL WARRANTY. A warranty by an ancestor from whom the title did or might have come to the heir. 2 Bla. Com. 301; Rawle, Cov. 30; 2 Hill. R. P. 360. Thus, a warrant by an elder son during lifetime of his father was lineal to a younger son, but a warranty by a younger son was collateral to the elder; for, though the younger might take the paternal estate through the elder, the elder could not take it through the younger; Litt. § 703. Abolished in England by stat. 3 & 4 Will. IV. c. 74, § 14.

LINES AND CORNERS. *In deeds and surveys.* Boundary-lines and their angles with each other. 17 Miss. 459; 21 Ala. 66; 9 Fost. & H. 471; 10 Gratt. 445; 16 Ga. 141.

LIQUIDATE. To pay; to settle. Webster, Dict.; 8 Wheat. 322. Liquidated damages are damages ascertained or agreed upon. Sedgw. Dam. 427 *et seq.*

LIQUIDATED DAMAGES. In Practice. Damages whose amount has been determined by anticipatory agreement between the parties.

Where there is an agreement between parties for the doing or not doing particular acts, the

parties may, if they please, estimate beforehand the damages to result from a breach of the agreement, and prescribe in the agreement itself the sum to be paid by either by way of damages for such breach. See 1 H. Bla. 232; 2 B. & P. 335, 350; 2 Bro. P. C. 431; 4 Burr. 2225; 2 Term, 32. The civil law appears to recognize such stipulations; Inst. 3. 16. 7; Toullier, 1. 3, no. 809; La. Civ. Code, art. 1928, n. 5; Code Civile, 1152, 1153. Such a stipulation on the subject of damages differs from a penalty in this, that the parties are holden by it; whereas a penalty is regarded as a forfeiture, from which the defaulting party can be relieved.

The sum named in an agreement as damages to be paid in case of a breach will, in general, be considered as liquidated damages, or as a penalty, according to the intent of the parties; and the mere use of the words "penalty" or "liquidated damages" will not be decisive of the question, if on the whole the instrument discloses a different intent; Story, Eq. Jur. 1318; 6 B. & C. 224; 6 Bingh. 141; 6 Ired. 186; 15 Me. 273; 2 Ala. N. S. 425; 8 Mo. 467; 69 N. Y. 45; 4 H. & N. 511. It has been said, however, that if the parties use the word "penalty," it will control the interpretation of the contract; 3 B. & P. 630; 7 Wheat. 13; 38 N. Y. 75; 13 N. H. 275; but in 16 N. Y. 469, the sum named was stated to be "liquidated damages," but was held to be a penalty. Whether the sum mentioned in the agreement to be paid for a breach is to be treated as a penalty or as liquidated damages is a question of law, to be determined by the judge upon a consideration of the whole instrument; 7 C. B. 716. The construction must be the same in law and equity; 5 H. L. C. 105. The tendency of the court is to regard the sum named as a penalty rather than liquidated damages; 5 Metc. Mass. 57; 2 B. & P. 346.

Such a stipulation in an agreement will be considered as a penalty, in the following cases:—

Where the parties in the agreement have expressly declared it or described it as a "penalty," and no other intent is clearly to be deduced from the instrument; 2 B. & P. 340, 350, 630; 1 Campb. 78; 7 Wheat. 14; 1 M'Mull. 106; 2 Ala. N. S. 425; 6 Metc. Mass. 61; 1 Pick. 451; 3 Johns. Cas. 297; 17 Barb. 260; 24 Vt. 97.

Where it is doubtful on the language of the instrument whether the stipulation was intended as a penalty or as liquidated damages; 3 C. & P. 240; 6 Humphr. Tenn. 186; 5 Sandf. 192; 24 Vt. 97; 16 Ill. 475.

Where the agreement was evidently made for the attainment of another object or purpose, to which the stipulation is wholly collateral; 11 Mass. 488; 15 *id.* 488; 1 Bro. C. C. 418.

Where the agreement imposes several distinct duties, or obligations of different degrees of importance, and yet the same sum is named as damages for a breach of either indifferently; 6 Bingh. 141; 5 Bingh. N. C. 390; 7 Scott, 364; 5 Sandf. 192. But see 7 Johns. 72; 15 *id.* 200; 9 N. Y. 551; 77 Ill. 452; 7 Nev. 339; L. R. 4 Ch. Div. 731.

Where the agreement is not under seal, and the damages are capable of being certainly known and estimated; 2 B. & Ald. 704; 6 B. & C. 216; 1 Mood. & M. 41; 4 Dall. 150; 5 Cow. 144.

Where the instrument provides that a larger sum shall be paid upon default to pay a lesser sum in the manner prescribed; 5 Sandf. 192, 640; 16 Ill. 400; 14 Ark. 329; 2 B. & P. 346.

Where the stipulation is made in respect of a matter certain in value, as the payment of a debt or liquidated money demand, and the sum fixed upon is greater than the debt or demand; 6 Bingh. 148; L. R. 8 Ch. 1022. If a debt be secured by a stipulation that in case of its not being paid at the appointed time, a larger sum shall become payable, the stipulation for the larger sum is in the nature of a penalty; L. R. 4 H. L. 1; Leake, Contr. 1092.

The stipulation will be sustained as liquidated damages in the following cases:—

Where the agreement is of such a nature that the damages are uncertain, and are not capable of being ascertained by any satisfactory and known rule; 1 Alc. & N. 389; 2 Burr. 2225; 10 Ves. 429; 13 M. & W. 702; 1 Ex. 665; 3 C. & P. 240; 8 Mass. 223; 7 Cow. 307; 4 Wend. 468; 5 Sandf. 192; 12 Barb. 137, 366; 14 Ark. 315; 2 Ohio St. 519; L. R. 15 Eq. 36; 101 Mass. 334.

Where, from the tenor of the agreement or from the nature of the case, it appears that the parties have ascertained the amount of damages by fair calculation and adjustment; 2 Story, Eq. Jur. § 1318; 2 Greenl. Ev. 259; 1 Bingh 302; 7 Conn. 291; 11 N. H. 234; 6 Blackf. 206; 13 Wend. 507; 26 *id.* 630; 10 Mass. 459; 7 Metc. 583; 2 Ala. N. S. 425; 14 Me. 250; 49 Mo. 406.

The penal sum in a bond is usually a penalty, but if a sum be agreed upon in the condition of a bond to be payable upon a breach, the question may arise whether it is liquidated damages or a penalty, and it will be subject to the same principles of construction as in any other forms of contract; Leake, Contr. 1091; 2 Ves. Sen. 530. See 5 H. L. C. 105.

Where the language used is explicit, the extravagance of the sum named as liquidated damages will not be considered; 5 Sandf. 192; 11 Rich. 550.

See 5 Sandf. 192; 75 Penn. 157; 30 Am. Rep. 26; 12 Am. L. Rev. 287; 1 Am. Dec. 331; Sedgw.; Mayne; Damages.

LIQUIDATION. A fixed and determinate valuation of things which before were uncertain.

LIQUOR. This term, when used in statutes forbidding the sale of liquors, refers only to spirituous or intoxicating liquors; 18 N. J. L. 311; 20 Barb. 246; 3 Denio, 407.

Ale, beer, porter, rum, gin, brandy, whisky, and wine are in Missouri held to be intoxicating

liquors; 12 Mo. 407. Lager beer is included in the term in many of the states; 8 Alb. L. J. 397; and evidence of its properties in this respect is unnecessary, as the court will take judicial notice of them; 55 Ala. 158; so, also, with wine; 80 N. C. 439. In Iowa, wine manufactured from grapes, currants, or fruits grown within the state is not included in the term intoxicating liquors; 38 Iowa, 465. See Rogers, Drinks, etc., 71, and an interesting case in 25 Kan. 751.

LIRA. The name of a foreign coin.

In all computations at the custom-house, the lira of Sardinia shall be estimated at eighteen cents and six mills, Act of March 22, 1846; the lira of the Lombardo-Venetian kingdom, and the lira of Tuscany at sixteen cents, Act of March 22, 1846.

LIS MOTA (Lat.). A controversy begun, *i. e.* on the point at issue, and prior to commencement of judicial proceedings. Such controversy is taken to arise on the advent of the state of facts on which the claim rests; and after such controversy has arisen (*post litem motam*) no declarations of deceased members of family as to matters of pedigree are admissible; 6 C. & P. 560; 4 Campb. 417; 2 Russ. & M. 161; Greenl. Ev. §§ 131, 132; 4 Maule & S. 497; 1 Pet. 337; 26 Barb. 177.

LIS PENDENS (Lat.). A pending suit. Suing out a writ and making attachment (on mesne process) constitutes a lis pendens at common law. 21 N. H. 570.

Filing the bill and serving a subpœna creates a *lis pendens* in equity; 1 Vern. 318; 7 Beav. 444; 27 Mo. 560; 4 Sneed, 672; 26 Miss. 397; 9 Paige, Ch. 512; 22 Ala. N. S. 743; 7 Blackf. 242; which the final decree terminates; 1 Vern. 318. In the civil law, an action is not said to be pending till it reaches the stage of *contestatio litis*. The phrase is sometimes incorrectly used as a substitute for *autre action pendant, q. v.* See 1 La. An. 46; 21 N. H. 570.

The proceedings must relate directly to the specific property in question; 1 Strobh. Eq. 180; 7 Blackf. 242; 7 Md. 537; Story, Eq. § 351; 1 Hill. Vend. 411; and the rule applies to no other suits; 1 M'Cord, Ch. 252.

Filing a judgment creditor's bill constitutes a *lis pendens;* 4 Edw. Ch. 29. A petition by heirs to sell real estate is not a *lis pendens;* 14 B. Monr. 164. The court must have jurisdiction over the thing; 1 McLean, 167. Generally, suit is not pending till service of process; 57 Mo. 362; 14 Pet. 322; 1 Sandf. 731; Wade, Notice, 152; but see 30 Tex. 494; 10 Ark. 479; 64 Mo. 519.

Only unreasonable and unusual negligence in the prosecution of a suit will take away its character as a *lis pendens;* 18 B. Monr. 230; 11 *id.* 297; there must be an active prosecution to keep it alive; 1 Vern. 286; 1 Russ. & M. 617; 30 Mo. 432; 9 Paige, 512; 21 Iowa, 421.

Lis pendens is said to be general notice to all the world; Ambl. 676; 2 P. Wms. 282; 3 Atk. 343; 1 Vern. 286; 3 Hayw. 147; 1 Johns. Ch. 556 (a leading case); but it has been said that it is not correct to speak of it as a part of the doctrine of notice; the purchaser *pendente lite* is effected, not by notice, but because the law does not allow litigating parties to give to others, pending the litigation, rights to the property in dispute so as to prejudice the opposite party. *Per* Cranworth, C., in 1 De G. & J. 566. The doctrine rests upon public policy, not notice; 2 Rand. 93; 10 W. N. C. (Pa). 389.

A voluntary assignment during the pendency of a suit does not affect the rights of other parties, if not disclosed, except so far as the alienation may disable the party from performing the decree of the court; Story, Eq. Pl. § 351; 15 Tex. 495; 22 Barb. 666: as in the case of mortgage by tenant in common of his undivided interest, and subsequent partition; 2 Sandf. Ch. 98.

An involuntary assignment by a plaintiff, as under the bankrupt or insolvent laws, renders the suit so defective that it cannot be prosecuted if the defendent objects; 7 Paige, Ch. 287; 1 Atk. 88; 4 Ves. 387; 9 Wend. 649; 1 Hare, 621; Story, Eq. Pl. § 349. Not if made under the bankrupt law of 1841; 27 Barb. 252.

The same may be said of a voluntary assignment of all his interest by a sole complainant; 5 Hare, 223; Story, Eq. Pl. § 349.

An alienee, during the pendency of a suit, is bound by the proceedings therein subsequent to the alienation, though before he became a party; 4 Beav. 40; 5 Mich. 456; 22 Barb. 166; 27 Penn. 418; 5 Du. N. Y. 631; 7 Blackf. 242.

Purchasers during the pendency of a suit are bound by the decree in the suit without being made parties; 1 Swanst. 55; 4 Russ. 372; 1 Dan. Ch. Pr. 375; Story, Eq. Pl. § 351 *a*; 32 Ala. N. S. 451; 11 Mo. 519; 30 Miss. 27; 12 La. An. 776; 6 Barb. 133; 22 *id.* 166; 27 Penn. 418; 7 Eng. 421; 16 Ill. 225; 5 B. Monr. 323; 9 B. Monr. 220; 11 Ind. 443; and will not be protected because they paid value and had no notice of the suit; 35 Conn. 250; 6 Iowa, 258.

So also is a purchaser during a suit to avoid a conveyance as fraudulent; 5 T. B. Monr. 373; 6 B. Monr. 18.

A citizen of the United States resident in a different state from that in which the suit is pending, is bound by the rule regarding purchasers *pendente lite;* 9 Pet. 86; and actual notice of the pendency of the suit is not necessary; 9 Dana, 372. See 12 Cent. L. J. 101.

Lis pendens by a mortgagor under a prior unrecorded mortgage is notice to a second mortgagee; 9 Ala. N. S. 921. But see 2 Rand. 93.

The rule does not apply where a title imperfect before suit brought is perfected during its pendency; 4 Cow. 667; 14 Ohio, 323.

A debtor need not pay to either party *pendente lite;* 1 Paige, Ch. 490.

The doctrine of *lis pendens* has been said to be an equitable doctrine only; 28 Conn. 593; but when one comes into possession of

the subject of litigation, during proceedings in ejectment, he will be bound by the judgment, though not a party, and may be ejected under the judgment against his assignor; Wade, Notice; 1 McLean, 87; 9 Cow. 233.

In law, the same effect is produced by the rule that each purchaser takes the title of his vendor only; 11 Md. 519; 27 Penn. 418; 6 Barb. 133; 30 Miss. 27; 5 Mich. 456; 1 Hill. Vend. 411. This doctrine has generally been confined to controversies over real estate; 22 Ala. 760; 30 Mo. 462; 2 Johns. Ch. 444; but a purchaser of securities *pendente lite* has been decreed to surrender them upon receiving the sum he had paid for them; 1 Desau. 167; and the principle has been extended to a bond and mortgage, assigned by a trustee, pending a suit by the *cestui que trust;* 2 Johns. Ch. 441.

The doctrine does not apply to stocks; 48 N. Y. 586; or to negotiable instruments, no matter by what form of action it is sought to subject them to adverse claims, when such instruments are in the hands of *bona fide* purchasers who acquired them before maturity; 68 Penn. 72; 20 How. 343; 38 Ga. 18; 22 Ala. 760; 23 Wisc. 21; 14 Wall. 283; 97 U. S. 96.

The doctrine of *lis pendens* is modified in many of the states of the United States, and by statutes requiring records of the attachment to preliminary proceedings to be made, and constituting such records notice. See stat. 2 Vict. c. 11, § 7; and Rev. Statutes of the various states.

See Wade, Notice; 4 Cent. L. J. 27; 14 Am. Dec. 774.

LIST. A table of cases arranged for trial or argument: as, the trial list, the argument list. See 3 Bouvier, Inst. n. 3031.

LISTERS. This word is used in some of the states to designate the persons appointed to make lists of taxables. See Vt. Rev. Stat. 538.

LITERÆ PROCURATORIÆ (Lat.). **In Civil Law.** Letters procuratory. A written authority, or power of attorney (*litera attornati*), given to a procurator. Vicat, Voc. Jur. Utr.; Bracton, fol. 40–43.

LITERAL CONTRACT. In Civil Law. A contract the whole of the evidence of which is reduced to writing, and binds the party who subscribed it, although he has received no consideration. Leç. Elém. § 887.

LITERARY PROPERTY. The general term which describes the interest of an author in his works, or of those who claim under him, whether before or after publication, or before or after a copyright has been secured. 9 Am. L. Reg. 44; 4 Du. N. Y. 379; 11 How. Pr. 49. See COPYRIGHT; MANUSCRIPT; Curtis, Copyright; 2 Bla. Com. 405, 406; 4 Viner, Abr. 278; Bacon, Abr. *Prorogation* (F 5); 2 Kent, 306–315; 1 Belt, Suppl. Ves. Jr. 360, 376; 2 *id.* 469; Nickl. Lit. Prop.; Dane, Abr. Index; 1 Chitty, Pr. 98; 2 Am. Jur. 248; 10 *id.* 62; 1 Bell, Com. b. 1, part 2, c. 4, s. 2, p. 115; Shortt, Copy.; Morgan, Law of Lit.

LITIGANT. One engaged in a suit; one fond of litigation.

LITIGATION. A contest, authorized by law, in a court of justice, for the purpose of enforcing a right.

In order to prevent injustice, courts of equity will restrain a party from further litigation, by a writ of injunction: for example, after two verdicts on trials at bar, in favor of the plaintiff, a perpetual injunction was decreed; Stra. 404. And not only between two individuals will a court of equity grant this relief, as in the above case of several ejectments, but also, when one general legal right, as a right of fishery, is claimed against several distinct persons, in which case there would be no end of bringing actions, since each action would only bind the particular right in question between the plaintiff and defendant in such action, without deciding the general right claimed. 2 Atk. 484; 2 Ves. 587. See CIRCUITY OF ACTIONS.

LITIGIOSITY. In Scotch Law. The pendency of a suit: it is an implied prohibition of alienation, to the disappointment of an action, or of diligence, the direct object of which is to obtain possession, or to acquire the property of a particular subject. The effect of it is analogous to that of inhibition. 2 Bell, Com. 5th ed. 152.

LITIGIOUS. That which is the subject of a suit or action; that which is contested in a court of justice. In another sense, litigious signifies a disposition to sue; a fondness for litigation.

In Ecclesiastical Law.

A church is said to be litigious, when two rival presentations are offered to the bishop upon the same avoidance of the living; Moz. & W.; 3 Steph. Com. 417.

LITIGIOUS RIGHTS. In French Law. Those which are or may be contested either in whole or in part, whether an action has been commenced, or when there is reason to apprehend one. Pothier, Vente, n. 584; 9 Mart. La. 183; Troplong, De la Vente, n. 984 à 1003; Eva. Civ. Code, art. 2623; *id.* 3522, n. 22. See CONTENTIOUS JURISDICTION.

LITISPENDENCIA. In Spanish Law. Litispendency. The condition of a suit pending in a court of justice.

In order to render this condition valid, it is necessary that the judge be competent to take cognizance of the cause; that the defendant has been duly cited to appear, and fully informed, in due time and form, of the nature of the demand, or that, if he has not, it has been through his own fault or fraud.

The litispendencia produces two effects: the legal impossibility of alienating the property in dispute during the pendency of the suit; the accumulation of all the proceedings in the cause, in the tribunal where the suit is pending, whether the same be had before the

same judge or other judges or notaries. This cumulation may be required in any stage of the cause, and forms a valid exception to the further proceeding, until the cumulation is effected. Escriche, Dict.

LITRE. A French measure of capacity. It is of the size of a cubic décimètre, or the cube of one-tenth part of a metre. It is equal to 61.027 cubic inches, or a little more than a quart. See MEASURE.

LITTORAL (*littus*). Belonging to shore: as, of sea and great lakes. Webst. Corresponding to riparian proprietors on a stream or small pond are littoral proprietors on a sea or lake. But riparian is also used coextensively with littoral. 7 Cush. 94. See 17 How. 426.

LITUS MARIS (Lat.). **In Civil Law.** Shore; beach. *Quâ fluctus eluderet.* Cic. Top. c. 7. *Quâ fluctus adludit.* Quinct. lib. 5, c. ult. *Quousque maximus fluctus a mari pervenit.* Celsus; said to have been first so defined by Cicero, in an award as arbitrator. L. 92, D, *de verb. signif.* *Quâ maximus fluctus exæstuat.* L. 112, D, *eod. tit.* *Quatenus hibernus fluctus maximus excurrit.* Inst. lib. 2, *de rer. divis. et qual.* § 3. That is to say, as far as the largest winter wave runs up. Vocab. Jur. Utr.

At Common Law. The shore between common high-water mark and low-water mark. Hale, de Jure Maris, cc. 4, 5, 6; 3 Kent, 427; 2 Hill. R. P. 90.

Shore is also used of a river. 5 Wheat. 385; 20 Wend. 149. See 13 How. 381; 28 Me. 180; 14 Penn. 171.

LIVE.

Under statute providing a punishment for those "living together" in fornication or adultery, occasional acts of intercourse are not sufficient; 14 Ind. 280; 37 Tex. 346; 25 Ga. 477; see 39 Ala. 554; 11 Mass. 158; 2 Ired. Eq. 226; 47 How. Pr. 446. "Live animals" has been held to include singing birds; 7 Blatchf. 235. "Live stock" has been held not to include live fowls; 5 Blatchf. 520.

LIVERY. In English Law. The delivery of possession of lands to those tenants who hold of the king *in capite* or by knight's service.

The name of a writ which lay for the heir of age to obtain possession of the seisin of his lands at the king's hands; abolished by stat. 12 Car. II. c. 24; Fitzh. N. B. 155; 2 Bla. Com. 68.

The distinguishing dress worn by the servants of a gentleman or nobleman, or by the members of a particular guild. "Livery or clothing." Say. 274. By stat. 1 Rich. II. c. 7, and 16 Rich. II. c. 4, none but the servants of a lord, and continually dwelling in his house, or those above rank of yeomen, should wear the lord's livery.

Privilege of a particular company or guild. The members of such company are called liverymen; Whart. Lex.

LIVERY OF SEISIN. In Estates. A delivery of possession of lands, tenements, and hereditaments unto one entitled to the same. This was a ceremony used in the common law for the conveyance of real estate; and livery was in *deed*, which was performed by the feoffor and the feoffee going upon the land and the latter receiving it from the former; or in *law*, where the same was not made on the land, but in sight of it; 2 Bla. Com. 315, 316.

In America, livery of seisin is unnecessary, it having been dispensed with either by express law or by usage. The delivery and recording of the deed have the same effect; Washb. R. P. 14, 35. In Maryland, until quite recently, it seems that a deed could not operate as a feoffment without livery of seisin; but under the Rev. Code of 1878, art. 44, § 6, neither livery of seisin nor indenting is necessary; 5 H. & J. 158. See 4 Kent, 381; 1 Mo. 553; 1 Pet. 508; 1 Bay, 107; 5 H. & J. 158; 11 Me. 318; 8 Cra. 229; Dane, Abr.; Bingh. Act. and Def. 96. SEISIN.

LIVRE TOURNOIS. In Common Law. A coin used in France before the revolution. It is to be computed in the *ad valorem* duty on goods, etc., at eighteen and a half cents. Act of March 2, 1798, § 61, 1 Story Laws, 629. See FOREIGN COINS.

LLOYDS. An association in the city of London, the members of which underwrite each other's policies; 2 Steph. Com. 129.

The name is derived from Lloyd's coffee house, the great resort for seafaring men and those doing business with them in the time of William III. and Anne. Lloyd's underwriters now carry on business in rooms over the Royal Exchange, still called Lloyd's. The affairs of subscribers to these rooms are managed by a committee, called Lloyd's Committee, who appoint agents in all the principal ports of the world, whose business it is to forward all such maritime news as may be of importance in guiding the judgment of the underwriters. These accounts, which arrive almost hourly from some part of the world, are at once posted up, and are called Lloyd's Written Lists. They are subsequently copied into three books, called Lloyd's Book. See Moz. & W.; Arn. Ins.

LLOYD'S BONDS. A kind of bond much used in commercial transactions in England. They are under the seal of a company admitting the indebtedness of the company to a specified amount to the obligee, with a covenant to pay him such amount with interest on a future day. Their validity depends on the considerations for which they are given; 2 Steph. Com. 108, n.; Lind. Part. 284; L. R. 2 Ex. 225; 4 Ch. App. 748.

LOAD-LINE. The depth to which a ship is loaded so as to sink in salt water.

Every owner of a British ship before entering his ship outwards from any port in the United Kingdom shall mark, in white or yellow on a dark ground, a circular disc, twelve inches in diameter, with a horizontal line eighteen inches long, through its centre, and the centre of this disc is to indicate the maximum load-line in salt water, to which the owner intends to load the ship for that voyage; Moz. & W.

LOADMANAGE. The pay to loadsmen; that is, persons who sail or row before ships, in barks or small vessels, with instruments for towing the ship and directing her course, in order that she may escape the dangers in her way. Pothier, Des Avaries, n. 137; Guidon de la Mer, c. 14; Bacon, Abr. *Merchant and Merchandise* (F). It is not in use in the United States.

LOAN. A bailment without reward. A bailment of an article for use or consumption without reward. The thing so bailed.

A loan, in general, implies that a thing is lent without reward; but, in some cases, a loan may be for a reward: as, the loan of money. 7 Pet. 109.

It would be an inquiry too purely speculative, whether this use of the term loan originated in the times when taking interest was considered usury and improper, the bailment of money which was to be returned in kind. The supposition would furnish a reasonable explanation of the exception to the general rule that loan includes properly only those bailments where no reward is given or received by the bailee.

In order to make a contract usurious, there must be a loan; Cowp. 112, 770; 1 Ves. 527; 3 Wils. 390; and the borrower must be bound to return the money at all events; 2 Sch. & L. 470. The purchase of a bond or note is not a loan; 3 Sch. & L. 469; 9 Pet. 103; but if such a purchase be merely colorable, it will be considered as a loan; 2 Johns. Cas. 60, 66; 12 S. & R. 46; 15 Johns. 44.

LOAN FOR CONSUMPTION. A contract by which the owner of a personal chattel, called the lender, delivers it to the bailee, called the borrower, to be returned in kind.

For example, if a person borrows a bushel of wheat, and at the end of a month returns to the lender a bushel of equal value. This class of loans is commonly considered under the head of bailments; but it lacks the one essential element of bailment, that of a *return* of the property: it is more strictly a barter or an exchange: the property passes to the borrower; 4 N. Y. 76; 8 *id.* 433; 4 Ohio St. 98; 3 Mas. 478; 1 Blackf. 353; Story, Bailm. § 439. Those cases sometimes called *ventuum* (the corresponding civil law term), such as where corn is delivered to a miller to be ground into wheat, are either cases of *hiring* of labor and service, as where the miller grinds and returns the identical wheat ground into flour, retaining a portion for his services, or constitute a mere exchange, as where he mixes the wheat with his own, undertaking to furnish an equivalent in corn. It amounts to a contract of sale, payment being stipulated for in a specified article instead of money.

LOAN FOR USE (called, also, *commodatum*). A bailment of an article to be used by the borrower without paying for the use. 2 Kent, 573.

Loan for use (called *commodatum* in the civil law) differs from a loan for consumption (called *mutuum* in the civil law) in this, that the *commodatum* must be specifically returned, the *mutuum* is to be returned in kind. In the case of a *commodatum*, the property in the thing remains in the lender; in a *mutuum*, the property passes to the borrower.

The loan, like other bailments, must be of some thing of a personal nature; Story, Bailm. § 223; it must be gratuitous; 2 Ld. Raym. 913; for the use of the borrower, and this as the principal object of the bailment; Story, Bailm. § 225; 13 Vt. 161; and must be lent to be specifically returned at the determination of the bailment; Story, Bailm. § 228.

The general law of contracts governs as to the capacity of the parties and the character of the use; Story, Bailm. §§ 50, 162, 302, 380. He who has a special property may loan the thing, and this even to the general owner, and the possession of the general owner still be that of a borrower; 1 Atk. 235; 8 Term, 199; 2 Taunt. 268.

The borrower may use the thing himself, but may not, in general, allow others to use it; 1 Mod. 210; 4 Sandf. 8; during the time and for the purposes and to the extent contemplated by the parties; 5 Mass. 104; 1 Const. S. C. 121; 3 Bingh. N. C. 468; Bracton, 99, 100. He is bound to use extraordinary diligence; 3 Bingh. N. C. 468; 14 Ill. 84; 4 Sandf. 8; Story, Bailm. § 237; is responsible for accidents, though inevitable, which injure the property during any excess of use; 5 Mass. 194; 16 Ga. 25; must bear the ordinary expenses of the thing; Jones, Bailm. 67; and restore it at the time and place and in the manner contemplated by the contract; 16 Ga. 25; 12 Tex. 373; Story, Bailm. § 99; including, also, all accessories; 16 Ga. 25; 2 Kent, 566. As to the place of delivery, see 9 Barb. 189; 1 Me. 120; 1 N. H. 295; 1 Conn. 255; 5 *id.* 76; 16 Mass. 453. He must, as a general rule, return it to the lender; 7 Cow. 278; 1 B. & Ad. 450; 11 Mass. 211.

The lender may terminate the loan at his pleasure; 9 East, 49; 1 Term, 480; 8 Johns. N. Y. 432; 16 Ga. 25; is perhaps liable for expenses adding a permanent benefit; Story, Bailm. § 274. The lender still retains his property as against third persons, and, for some purposes, his possession; 11 Johns. 285; 6 *id.* 195; 13 *id.* 141, 561; 1 Pick. 389; 5 Mass. 303; 1 Term, 480; 1 B. & Ald. 59; 2 Cr. M. & R. 659. As to whether the property is transferred by a recovery of judgment for its value, see 26 E. L. & Eq. 328; Metc. Yelv. 67, n.; 5 Me. 147; 1 Pick. 62. See, generally, Edwards, Jones, Story, on Bailments; Kent, Lect. 46.

LOAN SOCIETIES. In English Law. A kind of club formed for the purpose of advancing money on loan to the industrial classes. They are of comparatively recent origin in England, and are authorized and regulated by 3 & 4 Vict. ch. 110, and 21 Vict. ch. 19.

LOCAL ACTION. In Practice. An action the cause of which could have arisen in some particular county only.

All local actions must be brought in the county where the cause of action arose.

In general, all actions are local which seek the recovery of real property; 2 W. Blackst. 1070; 4 Term, 504; 7 *id.* 589; whether

founded upon contract or not; or damages for injury to such property, as waste, under the statute of Gloucester, trespass *quare clausum fregit*, trespass or case for injuries affecting things real, as for nuisances to houses or lands, disturbance of rights of way or of common, obstruction or diversion of ancient water-courses; 1 Chitty, Pl. 271; Gould, Pl. ch. 3, §§ 105, 106, 107; but not if there was a contract between the parties on which to ground an action; 15 Mass. 284; 1 Day, Conn. 263.

Many actions arising out of injuries to local rights are local: as, *quare impedit;* 1 Chitty, Pl. 241. The action of replevin is also local; 1 Wms. Saund. 247, n. 1; Gould, Pl. c. 3, § 111. See Gould, Chitty, *Pleading;* Comyns, Dig. *Action;* TRANSITORY ACTION.

LOCAL ALLEGIANCE. The allegiance due to a government from an alien while within its limits. 1 Bla. Com. 370; 2 Kent, 63, 64.

LOCAL OPTION. This term is used to designate a right granted by legislative enactments to the inhabitants of particular districts, to determine by ballot whether or not licenses should be issued for the sale of intoxicating liquors within such districts.

An act of this character passed in Delaware, in 1847, was declared unconstitutional as an attempted delegation of the trust to make laws, confided to the legislature; 4 Harr. 479; so, also, in Indiana and Iowa; 4 Ind. 342; 42 Ind. 547; 5 Iowa, 495. This kind of legislation has been supported, however, as falling within the class of police regulations; 108 Mass. 27. In Pennsylvania, Agnew, J., in a leading opinion on this subject, says, the true distinction is this: "The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend;" 72 Penn. 491. At this time the weight of authority is in favor of the constitutionality of local option laws; 36 N. J. 720; 42 Conn. 364; 42 Md. 71. See 12 Cent. L. J. 123; 12 Am. L. Reg. N. S. 133; Cooley, Const. Lim. 125.

LOCAL STATUTES. Statutes whose operation is intended to be restricted within certain limits. Dwarr. on Stat. p. 384. It may be either public or private. 1 Sharsw. Bla. Com. 85, 86, n. *Local statutes* is used by Lord Mansfield as opposed to *personal statutes*, which relate to personal transitory contracts; whereas local statutes refer to things in a certain jurisdiction alone: *e. g.*, the Statute of Frauds relates only to things in England; 1 W. Blackst. 246.

LOCALITY. In Scotch Law. This name is given to a life rent created in marriage contracts in favor of the wife, instead of leaving her to her legal life rent of terce. 1 Bell, Com. 55. See JOINTURE.

LOCATIO (Lat.). **In Civil Law.** Letting for hire. Calvinus, Lex.; Voc. Jur. Utr. The term is also used by text-writers upon the law of bailment at common law. 1 Parsons, Contr. 602. In Scotch law it is translated location. Bell, Dict.

LOCATIO OPERIS MERCIUM VEHENDARUM (Lat.). **In Civil Law.** The carriage of goods for hire.

In respect to contracts of this sort entered into by private persons not exercising the business of common carriers, there does not seem to be any material distinction varying the rights, obligations, and duties of the parties from those of other bailees for hire. Every such private person is bound to ordinary diligence and a reasonable exercise of skill; and of course he is not responsible for any losses not occasioned by ordinary negligence, unless he has expressly, by the terms of his contract, taken upon himself such risk; 2 Ld. Raym. 909, 917, 918; 4 Taunt. 787; 6 *id.* 577; 2 Marsh. 293; Jones, Bailm. 103, 106, 121; 2 B. & P. 417. See COMMON CARRIERS.

LOCATIO OPERIS (Lat.). **In Civil Law.** The hiring of labor and services.

It is a contract by which one of the parties gives a certain work to be performed by the other, who binds himself to do it for the price agreed between them, which he who gives the work to be done promises to pay to the other for doing it. Pothier, Louage, n. 392. This is divided into two branches: first, *locatio operis faciendi;* and, secondly, *locatio operis mercium vehendarum.* See these titles.

LOCATIO OPERIS FACIENDI (Lat.). **In Civil Law.** Hire of services to be performed.

There are two kinds: first, the *locatio operis faciendi* strictly so called, or the hire of labor and services; such as the hire of tailors to make clothes, and of jewellers to set gems, and of watchmakers to repair watches. Jones, Bailm. 90, 96, 97. Secondly, *locatio custodiæ*, or the receiving of goods on deposit for a reward, which is properly the hire of care and attention about the goods. Story, Bailm. §§ 422, 442.

In contracts for work, it is of the essence of the contract, first, that there should be work to be done; secondly, for a price or reward; and, thirdly, a lawful contract between parties capable and intending to contract. Pothier, Louage, nn. 395–403.

LOCATIO REI (Lat.). **In Civil Law.** The hiring of a thing. It is a contract by which one of the parties obligates himself to give to the other the use and enjoyment of a certain thing for a period of time agreed upon between them, and in consideration of a price which the latter binds himself to pay in return. Poth. Contr. de Louage, n. 1. See BAILMENT; HIRE; HIRER; LETTER.

LOCATION. In Scotch Law. A contract by which the temporary use of a subject, or the work or service of a person, is given for an ascertained hire. 1 Bell, Com. b. 2, pt. 3, c. 2, s. 4, art. 2, § 1, page 255. See BAILMENT; HIRE.

At Common Law. The act of selecting and designating lands which the person making the location is authorized by law to select.

It is applied among surveyors who are authorized by public authority to lay out lands by a particular warrant. The act of selecting the land designated in the warrant and surveying it is called its location. In Pennsylvania, it is an application made by any person for land, in the office of the secretary of the late land office of Pennsylvania, and entered in the books of said office, numbered and sent to the surveyor-general's office. Act June 25, 1781, § 2. It is often applied to denote the act of selecting and marking out the line upon which a railroad, canal, or highway is to be constructed.

LOCATIVE CALLS. Calls or requirements of a deed, etc., for certain landmarks, describing certain means by which the land to be located can be identified.

Reference to physical objects in entries and deeds, by which the land to be located is exactly described; 2 Bibb, 145; 3 *id.* 414.

Special, as distinguished from general, calls or descriptions; 3 Bibb, 414; 2 Wheat. 211; 10 *id.* 463; 7 Pet. 171; 18 Wend. 157; 10 Gratt. 445; Jones, Law, 469; 16 Ga. 141; 5 Ind. 302; 15 Mo. 80.

LOCATOR. In Civil Law. He who leases or lets a thing to hire to another. His duties are, *first*, to deliver to the hirer the thing hired, that he may use it; *second*, to guarantee to the hirer the free enjoyment of it; *third*, to keep the thing hired in good order in such manner that the hirer may enjoy it; *fourth*, to warrant that the thing hired has not such defects as to destroy its use. Pothier, Contr. de Louage, n. 53. One who locates, or surveys lands.

The claim of a "locator" is peculiar to Kentucky, and is for a portion of the land located in compensation for his services; 4 Pet. 446.

LOCK-UP HOUSE. A place used temporarily as a prison.

LOCO PARENTIS. See IN LOCO PARENTIS.

LOCUM TENENS. Holding the place. A deputy. See LIEUTENANT.

LOCUS CONTRACTUS. See LEX LOCI.

LOCUS DELICTI. The place where the tort, offence, or injury has been committed.

LOCUS PŒNITENTIÆ (Lat. a place of repentance). The opportunity of withdrawing from a projected contract, before the parties are finally bound; or of abandoning the intention of committing a crime, before it has been completed. 2 Bro. C. C. 569. Until an offer is accepted by the offeree the party making it may withdraw it at any time. So of a bid at auction. "An auction is not inaptly called *locus pœnitentiæ*." 3 Term, 148. See ATTEMPT.

LOCUS IN QUO (Lat. the place in which). **In Pleading.** The place where any thing is alleged to have been done. 1 Salk. 94.

LOCUS REI SITÆ. See LEX REI SITÆ.

LOCUS SIGILLI (Lat.). The place of the seal.

In many of the states, instead of sealing deeds, writs, and other papers or documents requiring it, a scroll is made, in which the letters L. S. are printed or written, which is an abbreviation of *Locus sigilli*. This, in some of the states, has all the efficacy of a seal, but in others it has no such effect. See SCROLL; SEAL.

LOCUS STANDI. (A place of standing.) A right of appearance in a court of justice or before a legislative body, on a given question. A right *to be heard*.

LODE MANAGE. The hire of a pilot, for conducting a ship from one place to another. Cowel.

LODGER. One who inhabits a portion of a house of which another has the general possession and custody.

It is difficult, in the present state of the law, to state exactly the distinctions between a lodger, a guest, and a boarder. A person may be a guest at an inn without being a lodger; 1 Salk. 388; 9 Pick. 280; 25 Wend. 653; 242; 16 Ala. N. S. 666; 8 Blackf. 535; 14 Barb. 193; 6 C. B. 132. And boarder includes one who regularly takes his meals with, and forms in some degree a part of, the householder's family. See BOARDER; GUEST; INN; INNKEEPER; 25 E. L. & Eq. 76. A lodger does not take meals in the house as lodger; but the duration of the inhabitancy is of no importance as determining his character. The difficulty in this respect is in deciding whether a person is an under-tenant, entitled to notice to quit, or merely a lodger, and not entitled to such notice. See Wood, Landl. & T. 177; 7 M. & G. 87.

LODGING HOUSE ACTS. Various acts for the well ordering of common lodging houses, beginning in 1851 with the stat. 14 & 15 Vict. c. 28. The last act on the subject was 31 & 32 Vict. c. 130.

LODS ET RENTES. A fine payable to the seigneur upon every sale of lands within his seigniory. 1 Low. C. 59.

Any transfer of lands for a consideration gives rise to the claim; 1 Low. C. 79; as, the creation of a *rente viagire* (life-rent); 1 Low. C. 84; a transfer under *bail emphyteotique*; 1 Low. C. 295; a promise to sell, accompanied by transfer of possession; 9 Low. C. 272. It does not arise on a transfer by a father to his son subject to a payment by the son of a life-rent to the father, and of the father's debts; 8 Low. C. 5, 34, 324; nor where property is required for public uses. 1 Low. C. 91.

LOG-BOOK. A ship's journal. It contains a minute account of the ship's course, with a short history of every occurrence during the voyage. 1 Marsh. Ins. 408.

The part of the log-book relating to transactions in the harbor is termed the *harbor log*; that relating to what happens at sea, the *sea log*. Young, Naut. Dic.

When a log-book is required by law to be kept, it is an official register so far as regards the transactions required by law to be entered in it, but no further. Abbott, Shipp. 468, n.

1; 1 Sumn. 373; 2 *id.* 19, 78; 4 Mas. 544; 1 Esp. 427; 1 Dods. 9; 2 Hagg. Eccl. 159; Gilp. 147.

All vessels making foreign voyages from the United States, or, of the burden of seventy-five tons or more, from a port on the Atlantic to a port on the Pacific, or *vice versa*, must have an official log-book; Rev. Stat. § 4290.

In suits for seamen's wages, the log-book is to be produced if required, or otherwise the complainant may state its contents. The neglect of a seaman to render himself on board, and his absence without leave, are also to be entered on the log-book in certain cases, or the sailor's fault will not forfeit his wages. Acts 20 July, 1790, sects. 2, 5, & 6; 7 June, 1872; 27 Feb. 1877.

It is the duty of the mate to keep the log-book. Dana, Seaman's Friend, 145, 200.

Every entry shall be signed by the master and mate or some other one of the crew, and shall be made as soon as possible after the occurrence to which it relates. For keeping the log in an improper manner the master is punishable by fine; Rev. Stat. §§ 4291, 4292.

LONDON AND MIDDLESEX SITTINGS.

The *nisi prius* sittings held at Westminster or in the Guildhall of London for the trial of causes arising for the most part in London or Middlesex. 3 Steph. Com. 514; Stat. 36 & 37 Vict. c. 66. By the Judicature Act, 1875, the sittings of the Court of Appeal and those in London and Middlesex of the High Court of Justice are to be four in every year: (1) The Michaelmas sittings, from Nov. 2 to Dec 21. (2) The Hilary sittings, from Jan. 11 to the Wednesday before Easter. (3) The Easter sittings, from the Tuesday after Easter week to the Friday before Whitsunday. (4) The Trinity sittings, from the Tuesday after Whitsun week to the 8th of August. Moz. & W.

LONDON COURT OF BANKRUPTCY. By the Judicature Act of 1875, sec. 9, this court is not to be consolidated with the Supreme Court of Judicature. See COURT OF BANKRUPTCY.

LONG PARLIAMENT.

The parliament which met November, 1640, under Charles I., and was dissolved (informally) by Cromwell on the 10th of April, 1653. The same name is also given to the parliament which met in 1661 and was dissolved Dec. 30, 1678. The latter is sometimes called, by way of distinction, the "Long Parliament of Charles II." Moz. & W.

LONG QUINTO, THE. An expression used to denote part II. of the year book which gives reports of cases in 5 Edw. IV. Wall. Reporters.

LONG VACATION. The recess of the English courts from August 10th to October 24th.

LOQUELA (Lat.). **In Practice.** An imparlance, *loquela sine die*, a respite in law to an indefinite time. Formerly by *loquela* was meant the allegations of fact mutually made on either side, now denominated the pleadings. Steph. Pl. 29.

LORD'S DAY. Sunday. Co. Litt. 135. See MAXIMS, *Dies Dominicus*.

LORD MAYOR'S COURT. In English Law. One of the chief courts of special and local jurisdiction in London. It is a court of the queen, held before the lord mayor and aldermen. Its practice and procedure are amended and its powers enlarged by 20 & 21 Vict. c. 157. In this court, the recorder, or, in his absence, the common serjeant, presides as judge; and from its judgments error may be brought in the exchequer chamber. 3 Steph. Com. 449, note *l*.

LORD HIGH CHANCELLOR. See CHANCELLOR.

LOSS. In Insurance. The destruction of or damage to the insured subject by the perils insured against, according to the express provisions and construction of the contract.

These accidents, or misfortunes, or perils, as they are usually denominated, are all distinctly enumerated in the policy. And no loss, however great or unforeseen, can be a loss within the policy unless it be the direct and immediate consequence of one or more of these perils. Marsh. Ins. 1, c. 12.

Loss under a life policy is simply the death of the subject by a cause the risk of which is not expressly excepted in the policy, and where the loss is not fraudulent, as where one assured, who assures the life of another for his own benefit, procures the death.

Loss in insurance against fire must, under the usual form of policy, be by the partial or total destruction or damage of the thing insured by fire.

In maritime insurance, in which loss by fire is one of the risks usually included, the loss insured against may be absolutely or constructively total, or a partial or general average loss, or a particular average.

A partial loss is any loss or damage short of, or not amounting to, a total loss; for if it be not the latter it must be the former. See 4 Mass. 374; 6 *id.* 102, 122, 317; 12 *id.* 170, 288; 8 Johns. 237; 10 *id.* 487; 5 Binn. 595; 2 S. & R. 553.

A total loss is such destruction of, or damage to, the thing insured that it is of little or no value to the owner.

Partial losses are sometimes denominated *average* losses, because they are often in the nature of those losses which are the subject of average contributions; and they are distinguished into general and particular averages. See AVERAGE.

Total losses, in maritime insurance, are absolutely such when the entire thing perishes or becomes of no value. Constructively, a loss may become total where the value remaining is of such a small amount that the whole may be surrendered. See ABANDONMENT.

Consult Phillips, Arnold, May, Insurance; Pars. Mar. Law; TOTAL LOSS.

LOST INSTRUMENT. The "copy" of a lost instrument intended by the Act of Congress of January 23, 1874 (for stamping unstamped instruments), is a substantial copy, or such a draft of the original instrument as will identify the subject of the tax; 82 Penn. 280.

LOST PAPERS. Papers which have been so mislaid that they cannot be found after diligent search.

When deeds, wills, agreements, and the like, have been lost, and it is desired to prove their contents, the party must prove that he has made diligent search, and in good faith exhausted all sources of information accessible to him. For this purpose his own affidavit is sufficient; 1 Atk. 446; 1 Greenl. Ev. § 349. On being satisfied of this, the court will allow secondary evidence to be given of its contents. See EVIDENCE.

Even a will proved to be lost may be admitted to probate upon secondary evidence; 1 Greenl. Ev. §§ 84, 509, 575; 1 P. D. 154; s. c. 17 Eng. Rep. 45, note; declarations, written or oral, made by a testator, both before and after the execution of the will, are admissible as secondary evidence; *id.* But the fact of the loss must be proved by the clearest evidence; 8 Metc. 487; 2 Add. Eccl. 223; 6 Wend. 173; 1 Hagg. Eccl. 115.

When a bond or other deed was lost, formerly the obligee or plaintiff was compelled to go into equity to seek relief, because there was no remedy at law, the plaintiff being required to make profert in his declaration; 1 Ch. Cas. 77. But in process of time courts of law dispensed with profert in such cases, and thereby obtained concurrent jurisdiction with the courts of chancery: so that now the loss of any paper, other than a negotiable note, will not prevent the plaintiff from recovering at law, as well as in equity; 3 Atk. 214; 1 Ves. 341; 7 *id.* 19; 3 V. & B. 54.

When a negotiable note has been lost, equity alone will, in the absence of statutory provisions, grant relief. In such case the claimant must tender an indemnity to the debtor, and file a bill in chancery to compel payment; 7 B. & C. 90; Ry. & M. 90; 4 Taunt. 602; 2 Ves. Sen. 317; 16 Ves. 430.

LOST, OR NOT LOST. A phrase in policies of insurance, signifying the contract to be retrospective and applicable to any loss within the specified risk, provided the same is not already known to either of the parties, and that neither has any knowledge or information not equally obvious or known to the other. The clause has been adopted only in maritime insurance; though a fire or life policy is not unfrequently retrospect, or, under a different phraseology, by a provision that the risk is to commence at some time prior to its date. 1 Phill. Ins. § 925.

LOST PROPERTY. See FINDER.

LOT. That which fortuitously determines what we are to acquire.

When it can be certainly known what are our rights, we ought never to resort to a decision by lot; but when it is impossible to tell what actually belongs to us, as if an estate is divided into three parts and one part given to each of three persons, the proper way to ascertain each one's part is to draw lots. Wolff, Dr. etc. de la Nat. § 669.

Verdicts reached by a jury by drawing lots will be set aside; 1 Ky. L. J. 500. See also 1 Wash. Ty. 329; s. c. 34 Am. Rep. 808, n.

LOT OF GROUND. A small piece of land in a town or city, usually employed for building, a yard, a garden, or such other urban use. Lots are *in-lots*, or those within the boundary of the city or town, and *out-lots*, those which are out of such boundary and which are used by some of the inhabitants of such town or city.

The holder of a lot of ground in a cemetery for burial purposes has not a property in the soil, but only an easement, and takes such easement subject to any change that the altered circumstances of the congregation or of the neighborhood may render necessary; 19 Am. L. Reg. 65; 88 Penn. 42; Washb. R. P.; Boone, Corp.

LOTTERY. A scheme for the distribution of prizes by chance. Lotteries were formerly often resorted to as a means of raising money by states as well as individuals, and are still authorized in many foreign countries and in a few of our states, but have been abolished as immoral in England, and generally throughout this country. They were declared a nuisance and prohibited by 10 & 11 Will. III. c. 17, and foreign lotteries were forbidden to be advertised in England by the 6 & 7 Will. IV. c. 66; 1 C. B. 974; Brown, Dict.

As to what constitutes a lottery: the disposal of any species of property by any of the schemes or games of chance popularly regarded as innocent, comes within this term of the law. Raffles at fairs, etc., are as clearly violations of the criminal law as the most elaborate and carefully organized lotteries; 8 Phila. 457. Thus, the American Art Union is a lottery; 8 N. Y. 228, 240; so a "gift-sale" of books; 33 N. H. 329; so "prize-concerts;" 97 Mass. 583; and "gift-exhibitions;" 32 N. J. L. 398; 12 Abb. Pr. N. S. 210; 59 Ill. 160; 62 Ala. 334; 74 N. Y. 63. The payment of prizes need not be in money; 7 N. Y. 228.

The legislature of a state cannot, by chartering a lottery company, defeat the will of the people expressed in the constitution, in relation to the continuance of such business in their midst; hence, a provision of a state constitution prohibiting the legislature from authorizing any lottery, passed subsequently to the chartering a lottery, is not unconstitutional as impairing the obligation of contracts; 101 U. S. 814; overruling 3 Woods, 222, and 66 Ind. 588. Nor is a statute which prohibits lotteries rendered inoperative, because it virtually deprives a foreign government of the privilege of selling its bonds within the state; 21 Hun, 466.

Under the act of 12 July, 1876, Rev. Stat. § 3894, any person who shall deposit or send lottery circulars by mail is punishable by fine; 14 Blatchf. 245; and a court of equity will not grant relief where letters addressed to the secretary of a lottery company are detained by a postmaster under the direction of the postmaster-general, if the pleadings fail to show that the letters had no connection with the lottery business; 1 Fed. Rep. 417; see *id.* 426. The act of 8 June, 1872, Rev. Stat. § 4041, authorizes the postmaster-general to forbid the payment by any postmaster of a money order to any person engaged in the lottery business. But this does not authorize any person to open any letter not addressed to himself. Lottery ticket dealer is defined by the act of July 13, 1866, § 9; 14 Stat. at L. 116.

LOUAGE. In French Law. The contract of hiring and letting. It may be of things or of labor. (1) Letting of things.

(*a*) *Bail à loyer*, the letting of houses; (*b*) *Bail à ferme*, the letting of land; (2) Letting of *labor*,—(*a*) Loyer, the letting of personal service; (*b*) *Bail à chaptel*, the letting of animals; Brown, Dict.

LOUISIANA. The name of one of the states of the United States of America.

It was first explored by the French in 1682, under Robert Chevalier de la Salle, and named Louisiana, in honor of Louis XIV. In 1699, a French settlement was begun at Iberville by Lemoyne d'Iberville. His efforts were followed up in 1712 by Anthony Crozat, a man of wealth, who upheld the trade of the country for several years. About 1717 all his interest in the province was transferred to the "Western Company," a chartered corporation, at the head of which was the celebrated John Law, whose speculations involved the ruin of one-half the French nobility. In 1732 the "Company" resigned all their rights to the Crown, by whom the whole of Louisiana was ceded to Spain in 1762. By the treaty of St. Ildefonso, signed October 1, 1800, Spain re-conveyed it to France, from whom it was purchased by the United States, April 30, 1803, for $15,000,000. Louisiana was admitted into the Union by an act of congress, approved April 8, 1812.

It covers a part of the territory ceded by France to the United States, and was admitted into the Union with the following limits: Beginning at the mouth of the river Sabine; thence by a line to be drawn along the middle of said river, including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down the said river to the river Iberville, and from thence along the middle of said river to lakes Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded by said Gulf to the place of beginning, including all islands within three leagues of the coast. These limits were enlarged by virtue of an act of congress, with the consent of the legislature of the state, April 14, 1812, by adding all that tract of country comprehended within the following bounds, to wit: Beginning with the junction of the Iberville with the river Mississippi; thence along the middle of the Iberville, the river Amite, and the lakes Maurepas and Pontchartrain to the eastern mouth of the Pearl River; thence up the eastern branch of Pearl River to the thirty-first degree of north latitude; thence along the said degree of latitude to the river Mississippi; thence down the said river to the place of beginning. The territory thus added to the limits of the state had, up to that time, been subject to the dominion of Spain, and the parishes into which it has been divided are, for this reason, still called in popular language "the Florida Parishes."

The first constitution of Louisiana was adopted on January 22, 1812, and was substantially copied from that of Kentucky. This constitution was superseded by that of 1845, which was in its turn replaced by the one adopted July 31, 1852. Next in order came the constitution of 1864, which yielded to that of 1868, which last was finally succeeded by the constitution adopted July 23, 1879, now in force.

Every male citizen of the United States, and every male person of foreign birth who has been naturalized, or who may have legally declared his intention to become a citizen of the United States before he offers to vote, who is twenty-one years old or upwards, is an elector, and is entitled to vote at any election by the people, provided he be: 1. An actual resident of the state, at least one year next preceding the election at which he offers to vote. 2. An actual resident of the parish in which he offers to vote, at least six months next preceding the election. 3. An actual resident of the ward or precinct in which he offers to vote, at least thirty days next preceding the election.

THE LEGISLATIVE POWER is vested in a general assembly which consists of a senate and house of representatives. Every elector is eligible to a seat in the house of representatives, and every elector who has reached the age of twenty-five years is eligible to the senate. No person is eligible to the general assembly, unless at the time of his election he was a citizen of the state for five years, and an actual resident of the district or parish from which he may be elected, for two years immediately preceding his election. All members of the general assembly are elected for a term of four years. Representation in the house of representatives is equal and uniform, and is regulated and ascertained by the total population. A representative number is fixed and each parish and election district has as many representatives as the aggregate number of its population entitles it to, and an additional representative for any fraction exceeding one-half the representative number. The number of representatives can not be more than ninety-eight nor less than seventy; but each parish must have at least one representative. The state is divided into senatorial districts. The number of senators can not be more than thirty-six nor less than twenty-four, and they are apportioned by the constitution among the senatorial districts according to the total population contained in the several districts.

THE EXECUTIVE POWER consists of a governor, lieutenant-governor, auditor, treasurer, and secretary of state.

The supreme executive power of the state is vested in the governor. He is elected by the qualified electors for representatives at the time and place of voting for representatives, and holds office during four years. If two persons have an equal and the highest number of votes, a selection is to be made between these by the joint vote of the general assembly. The governor must be thirty years of age; must have been ten years a citizen of the United States, and resident of the state for the same space and time preceding his election; and must not be a member of congress or hold office under the United States at the time of or within six months immediately preceding the election for such office. He is commander-in-chief of the militia of the state except when they are called into the active service of the United States; is to take care that the laws be faithfully executed; must give to the general assembly information respecting the situation of the state, and recommend such measures as he may deem expedient; has power to grant reprieves for all offences against the state, and, except in cases of impeachment or treason, has, upon the recommendation in writing of the lieutenant-governor, attorney-general, and presiding judge of the court before which conviction was had, or any two of them, power to grant pardons, commute sentences, and remit fines and forfeitures after conviction. In cases of treason he may grant reprieves until the end of the next session of the general assembly, in which body the power of pardoning is vested. He nominates, and by and with the advice and consent of the senate appoints all officers whose appointments are not expressly otherwise provided for by the constitution or the legislature; has power to fill

vacancies during the recess of the senate, provided he appoint no one whom the senate has rejected for the same office. He may require information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices; and has power on extraordinary occasions to convene the general assembly at the seat of government, or at a different place, if that should have become dangerous from an enemy or from an epidemic. He has the veto power, but must return the bill vetoed, with his objections, to the house where it originated, and it may still become a law, by a vote of two-thirds of the members of that house. (Const. arts. 58–79).

The *lieutenant-governor* is elected by the people at the same time, for the same term, and must possess the same qualifications as the governor. He is president of the senate by virtue of his office, but has only a casting vote therein. In case of the impeachment of the governor, his removal from office, death, refusal or inability to qualify, disability, resignation, or absence from the state, the powers and duties of the office devolve upon the lieutenant-governor for the residue of the term, or until the governor absent or impeached shall return or be acquitted, or the disability be removed.

The treasurer, auditor, secretary of state, and also the attorney-general, are elected by the qualified electors of the state for the term of four years.

THE JUDICIAL POWER is vested in a supreme court, in courts of appeal, in district courts, and in justices of the peace.

The *supreme court* is composed of one chief justice and four associate justices, appointed by the governor by and with the advice and consent of the senate. They must be citizens of the United States, and of the state, over thirty-five years of age, learned in the law, and must have practised law in the state for ten years preceding their appointment. The judges of the first supreme court, organized under the constitution of 1879, were appointed as follows: The chief justice for the term of twelve years; one associate justice for the term of ten years; one associate justice for the term of eight years; one for the term of six years; and one for the term of four years. After the expiration of the short term a vacancy will occur every two years. The state is divided into four supreme court districts, and the court is composed of judges appointed from those districts. The supreme court has appellate jurisdiction, which extends to all cases where the matter in dispute or the fund to be distributed, whatever may be the amount therein claimed, exceeds one thousand dollars exclusive of interest; to suits for divorce and separation from bed and board, and to all cases in which the constitutionality or legality of any tax, toll, or impost whatever, or of any fine, forfeiture, or penalty imposed by a municipal corporation is in contestation, whatever may be the amount thereof, and in such cases, the appeal on the law and the facts shall be directly from the court in which the case originated to the supreme court; and to criminal cases on questions of law alone, whenever the punishment of death or imprisonment at hard labor may be inflicted, or a fine exceeding three hundred dollars is actually imposed. Its civil remedial jurisdiction extends to both law and facts. It has appellate jurisdiction only, but exercises control and general supervision over all inferior courts; and may issue writs of habeas corpus, certiorari, prohibition, mandamus, quo warranto, and other remedial writs.

Courts of Appeal.—The state, with the exception of the Parish of Orleans, is divided into five circuits, in each of which there is a court of appeals, composed of two judges elected by the two houses of the general assembly in joint session—one judge for a term of eight years, and one for a term of four years. The judges must be learned in the law, and must have resided and practised law in the state for six years, and must have been actual residents of the circuit from which they are elected, for at last two years next preceding their election. This court of appeals has appellate jurisdiction which extends to all cases civil or probate, when the matter in dispute or fund to be distributed exceeds two hundred dollars exclusive of interest, and does not exceed one thousand dollars exclusive of interest. This jurisdiction is appellate only, but the judges have power to grant writs of *habeas corpus* within their circuits, and may also issue remedial writs in aid of their appellate jurisdiction. Whenever the judges composing the courts of appeal concur, their judgment is final; in case of disagreement, the judgment appealed from stands affirmed.

District Courts.—The state (with the exception of the Parish of Orleans) is divided into twenty-six judicial districts, in each of which there is a district court, presided over by one judge. The district judges are elected for the term of four years by the people of their respective districts, where they must have resided for two years next preceding their election. They must be learned in the law, and must have practised law in the state for five years previous to their election. The district courts have original jurisdiction in all civil matters where the amount in dispute exceeds fifty dollars, exclusive of interest. They have unlimited original jurisdiction in all criminal, probate, and succession matters, and when a succession is a party defendant; they have also jurisdiction of appeals from justices of the peace in all matters where the amount in controversy exceeds ten dollars exclusive of interest.

Courts of the Parish and City of New Orleans.—There are in the Parish of Orleans:—

1. *A court of appeals*, the jurisdiction of which is of the same nature as, and coextensive with that of the courts of appeal in the other parishes. The appeals to this court are upon questions of law alone in all cases involving less than five hundred dollars exclusive of interest, and upon the law and the facts in other cases. The court is presided over by two judges, who must have the same qualifications, and who are elected in the same manner and for the same term of office as the judges of the other appellate courts in the state.

2. *Two district courts*, the civil district court and the criminal district court. The former consists of five, and the latter of two judges, who must have the qualifications prescribed for district judges throughout the state, and are appointed by the governor by and with the advice of the senate. Three judges of the civil district court are appointed for four years, and two for eight years; one judge of the criminal district court for eight years, and the other for four years. The civil district court has exclusive and general probate, and exclusive civil jurisdiction in all cases where the amount in dispute exceeds one hundred dollars exclusive of interest. The criminal district court has general criminal jurisdiction only.

Justices of the Peace.—In each parish (that of Orleans excepted) there are justices of the peace who are elected for the term of four years. They have exclusive original jurisdiction in all civil matters when the amount in dispute does

not exceed fifty dollars exclusive of interest, and original jurisdiction concurrent with the district court when the amount in dispute exceeds fifty dollars, and does not exceed one hundred dollars exclusive of interest. They have, also, criminal jurisdiction as committing magistrates, with power to bail or discharge in cases not capital, or necessarily punishable at hard labor.

The justices of the peace ceased to exist in the parish of Orleans with the adoption of the constitution of 1879, and in their stead were substituted the city courts—four in number—presided over by judges having all the qualifications required for district judges, and elected by the people of the parish for the term of four years. They have exclusive and final jurisdiction over all sums not exceeding one hundred dollars exclusive of interest.

SYSTEM OF LAWS. Louisiana is governed by the civil law, unlike the other states of the Union. The first body of civil laws was adopted in 1808, and was substantially the same as the Code Napoleon, with some modifications derived from the Spanish law. It was styled the "Digest of the Civil Law," and has been afterwards frequently revised and enlarged to suit the numerous statutory changes in the law, and since 1825 has become known as the "Civil Code of Louisiana. There is no criminal offence in this state but such as is provided for by statute; the law does not define crimes, but prescribes their punishment by reference to their name; for definitions we turn to the common law of England. The civil code lays down the general leading principles of *evidence*, and the courts refer to treatises on that branch of the law for the development of those principles in their application to particular cases, as they arise in practice. Most of these rules have been borrowed from the English law, as having a more solid foundation in reason and common sense. The usages of trade sanctioned by courts of different countries at different times, or the *lex mercatoria*, also exist entirely distinct and independent of the civil code, and are recognized and duly enforced. When Louisiana was ceded to the United States, some of the lawyers from the old states spared no efforts to introduce the laws with which they were familiar, and of which they sought to avail themselves, rather than undergo the toil of learning a new system in a foreign language. But of those conversant with the common law, the most eminent did not favor its introduction as a general system to the exclusion of the civil law." 7 Ann. 395. The laws of the state on public and personal rights, criminal and commercial matters were assimilated to those of the other states; but in relation to real property and its tenures, the common law or English equity system has never had place in Louisiana.

LOW-WATER MARK. That part of the shore of the sea to which the waters recede when the tide is lowest; *i. e.* the line to which the ebb-tide usually recedes, or the ordinary low-water mark unaffected by drought; 26 Me. 384; 60 Penn. 339. See HIGH-WATER MARK; RIVER; SEA-SHORE; Dane, Abr.; 1 Halst. Ch. 1.

LOYAL. Legal, or according to law: as, loyal matrimony, a lawful marriage.

"*Uncore n'est loyal a homme de faire un tort*" (it is never lawful for a man to do a wrong). Dyer, fol. 36, § 38. "*Et per curiam n'est loyal*" (and it was held by the court that it was not lawful). T. Jones, 24. Also spelled *loayl*. Dy. 36, § 38; Law Fr. & Lat. Dict. The Norman spelling is "*loyse*." Kelh. Norm. Dict.

Faithful to a prince or superior; true to plighted faith or duty. Webster, Dict.

LOYALTY. Adherence to law. Faithfulness to the existing government.

LUCID INTERVALS. In Medical Jurisprudence. Periods in which an insane person is so far free from his disease that the ordinary legal consequences of insanity do not apply to acts done therein.

Correct notions respecting the lucid interval are no less necessary than correct notions respecting the disease itself. By the earlier writers on insanity, lucid intervals were regarded as a far more common event than they have been found to be in recent times. They were also supposed to be characterized by a degree of mental clearness and vigor not often witnessed now. These views of medical writers were shared by distinguished legal authorities, by whom the lucid interval was described as a complete, though temporary, restoration. D'Aguesseau, in his pleading in the case of the Abbé d'Orléans, says, "It must not be a superficial tranquillity, a shadow of repose, but, on the contrary, a profound tranquillity, a real repose; it must not be a mere ray of reason, which makes its absence more apparent when it is gone,—not a flash of lightning, which pierces through the darkness only to render it more gloomy and dismal,—not a glimmering which joins the night to the day,—but a perfect light, a lively and continued lustre, a full and entire day interposed between the two separate nights of the fury which precedes and follows it; and, to use another image, it is not a deceitful and faithless stillness which follows or forebodes a storm, but a sure and steadfast tranquillity for a time, a real calm, a perfect serenity. In fine, without looking for so many metaphors to represent our idea, it must not be a mere diminution, a remission of the complaint, but a kind of temporary cure, an intermission so clearly marked as in every respect to resemble the restoration of health." Pothier, Obl. Evans ed. 579. So Lord Thurlow says, by a perfect interval, "I do not mean a cooler moment, an abatement of pain or violence or of a higher state of torture,—a mind relieved from excessive pressure; but an interval in which the mind, having thrown off the disease, had recovered its general habit." 3 Bro. Ch. 234. That there sometimes occurs an intermission in which the person appears to be perfectly rational, restored, in fact, to his proper self, is an unquestionable fact. It is equally true that they are of rare occurrence, that they continue but for a very brief period, and that with the apparent clearness there is a real loss of mental force and acuteness. In most cases of insanity there may be observed, from time to time, a remission of the symptoms, in which excitement and violence are replaced by quiet and calm, and, within a certain range, the patient converses correctly and properly. A superficial observer might be able to detect no trace of disease; but a little further examination would show a confusion of ideas and singularity of behavior, indicative of serious, though latent, disease. In this condition the patient may hold some correct notions, even on a matter of business, and yet be quite incompetent to embrace all the relations connected with a contract or a will, even though no delusion were present to warp his judgment. The revelations of patients after recovery furnish indubitable proof that during this remission of the symptoms the mind is in a state of confusion

utterly unreliable for any business purpose. Georget, Des Mal. Men. 46; Reid, Essays on Hypochondriacal Affections, 21 Essay; Combe, Men. Derang. 241; Ray, Med. Jur. 376.

Of late years—whatever may have been the earlier practice—courts have not required that proof of a lucid interval which consists of complete restoration of reason, as described above. They have been satisfied with such proof as was furnished by the transaction in question. They cared less to consider the general state of mind than its special manifestations on a particular occasion. In 1 Phill. Lect. 90, the court said, "I think the strongest and best proof that can arise as to a lucid interval is that which arises from the act itself;" if that "is a rational act, rationally done, the whole case is proved;" "if she could converse rationally, that is a lucid interval." 2 C. & P. 415. This is a mere begging of the question, which is whether the act so rational and so rationally done—and not for that reason necessarily incompatible with insanity—was or was not done in a lucid interval. Persons very insane, violent, and full of delusions frequently do and say things evincing no mark of disease, while no one supposes that there is any lucid interval in the case. Correcter views prevailed in 2 Hagg. 433, where the court pronounced against two wills which showed no trace of folly, because the testator had been confessedly so insane as to require an attendant from an asylum, until within a few months of the date of the last will, and had manifested delusions during the period that intervened between the two wills in question. "It is clear," said the court, "that persons essentially insane may be calm, may do acts, hold conversations, and even pass in general society as perfectly sane. It often requires close examination by persons skilled in the disorder, to discover and ascertain whether or not the mental derangement is removed and the mind become again perfectly sound. Where there is calmness, where there is rationality on ordinary subjects, those who see the party usually conclude that his recovery is perfect. . . . When there is not actual recovery, and a return to the management of himself and his concerns by the unfortunate individual, the proof of a lucid interval is extremely difficult."

In criminal cases, the proof of a lucid interval must be still more difficult, in the very nature of the case. For although the mental manifestations may be perfectly right, it cannot be supposed that the brain has resumed its normal condition. In its outward expression, insanity, like many other nervous diseases, is characterized by a certain periodicity, whereby the prominent symptoms disappear for a time, only to return within a very limited period. An epileptic, in the intervals between his fits, may evince to the closest observer not a single trace of mental or bodily disease; and yet, for all that, nobody supposes that he has recovered from his malady. No more does a lucid interval in a case of insanity imply that the disease has disappeared because its outward manifestations have ceased. There unquestionably remains an abnormal condition of the brain, by whatever name it may be called, whereby the power of the mind to sustain provocations, to resist temptations, or withstand any other causes of excitement, is greatly weakened.

Lucid intervals, properly so called, should not be confounded with those periods of apparent recovery which occur between two successive attacks of mental disease, nor with those transitions from one phasis of insanity to another, in which the individual seems to be in his natural condition. They may not be essentially different, but the suddenness and brevity of the former would be likely to impart to an act a moral complexion very different from that which it would bear if performed in the larger and more indefinite intermissions of the latter. Still, great forbearance should be exercised towards persons committing criminal acts while in any of these equivocal conditions. Those who have suffered repeated attacks of mental disease habitually labor under a degree of nervous irritability, which renders them peculiarly susceptible to many of those incidents and influences which lead to crime. The law may make no distinction, but executive and judicial tribunals are generally intrusted with discretionary powers, whereby they are enabled to apportion the punishment according to the moral guilt of the party. Ray, Med. Jur. chap. *Luc. Int.*

It is the duty of the party who contends for a lucid interval, to prove it; for a person once insane is presumed so, until it is shown that he had a lucid interval, or has recovered; Swinb. 77; Co. Litt. 185, n.; 3 Bro. Ch. 443; 1 Const. 225; 1 Pet. 163; 1 Litt. 102; and yet, on the trial of Hadfield, whose insanity, both before and after the act, was admitted, the court, Lord Kenyon, said that, "were they to run into nicety, proof might be demanded of his insanity at the precise moment when the act was committed." See INSANITY.

LUCRATIVE SUCCESSION. In Scotch Law. The passive title of *præceptio hæreditatis*, by which, if an heir apparent receive gratuitously a part, however small, of the heritage which would come to him as heir, he is liable for all the grantor's precontracted debts. Erskine, Inst. 3. 8. 87–89; Stair, Inst. 3. 7.

LUCRI CAUSA (Lat. for the sake of gain). **In Criminal Law.** A term descriptive of the intent with which property is taken in cases of larceny.

According to the tenor of the latest authorities, *lucri causâ* would appear to be immaterial; though, in recent cases, judges have sometimes thought it advisable not to deny, but rather to confess and avoid it, however sophistically. The prisoner, a servant of A, applied for, and received, at the post-office, all A's letters, and delivered them to A, with the exception of one, which the prisoner destroyed in the hope of suppressing inquiries respecting her character. This was held to be a larceny; "for, supposing that it was a necessary ingredient in that crime that it should be done *lucri causâ* (which was not admitted), there were sufficient advantages to be obtained by the prisoner in making away with the written character." 1 Den. C. C. 180. In a case where some servants in husbandry had the care of their master's team, they entered his granary by means of a false key, and took out of it two bushels of beans, which they gave to his horses. Of eleven judges, three were of opinion that there was no felony. Of the eight judges who were for a conviction, some (it is not stated how many) alleged that by the better feeding of the horses the men's labor was lessened, so that they took the beans to give themselves ease,—

which was, constructively at least, *lucri causâ;* Russ. & R. 307. When a similar case afterwards came to be decided by the judges, it was said to be no longer *res integra;* 1 Den. C. C. 193. The rule with regard to the *lucri causâ* is stated by the English criminal law commissioners in the following terms: "The ulterior motive by which the taker is influenced in depriving the owner of his property altogether, whether it is to benefit himself or another, or to injure any one by the taking, is immaterial." Co. 17. In this country, these cases have not been considered as authority; 18 Ala. 461.

But the American courts have not discussed very much the question of *lucri causa.* "The rule is now well settled, that it is not necessary to constitute larceny that the taking should be in order to convert the thing stolen to the pecuniary gain of the taker; and that it is sufficient if the taking be fraudulent, and with an intent wholly to deprive the owner of the property." 35 Miss. 214; 14 Ind. 36; 52 Ala. 411.

See 16 Miss. 401; 10 Ala. N. S. 814; 3 Strobh. 508; 1 C. & K. 532; C. & M. 547; Inst. lib. 4, t. 1, § 1; 2 Bish. C. L. §§ 842–848.

LUCRUM CESSANS. In Scotch Law. A cessation of gain. Opposed to *damnum emergens,* an actual loss.

LUGGAGE. Such articles of personal comfort and conveniences as travellers usually find it desirable to carry with them. This term is synonymous with baggage: the latter being in more common use in this country, while the former seems to be almost exclusively used in England. See BAGGAGE.

LUNACY. See INSANITY.

LUNAR. Belonging to or measured by the moon.

LUNAR MONTH. See MONTH.

LUNATIC. One who is insane. See INSANITY; DE LUNATICO INQUIRENDO.

LUSHBOROW. A counterfeit coin, made abroad like English money, and brought in during Edward III.'s reign. To bring any of it into the realm was made treason. Cowel.

LYEF-GELD. In Saxon Law. Leave-money. A small sum paid by customary tenant for leave to plough, etc. Cowel; Somn. on Gavelk. p. 27.

LYING IN GRANT. Incorporeal rights and things which cannot be transferred by livery of possession, but which exist only in idea, in contemplation of law, are said to lie in grant, and pass by the mere delivery of the deed. See GRANT; LIVERY OF SEISIN; SEISIN.

LYING IN WAIT. Being in ambush for the purpose of murdering another.

Lying in wait is evidence of deliberation and intention. Where murder is divided into degrees, as in Pennsylvania, lying in wait is such evidence of malice that it makes the killing, when it takes place, murder in the first degree. See Dane, Abr. Index.

LYNCH-LAW. A common phrase used to express the vengeance of a mob inflicting an injury and committing an outrage upon a person suspected of some offence. In England this is called *Lidford Law.*

All who consent to the infliction of capital punishment by lynch law are guilty of murder in the first degree when not executed in hot blood. The act strikingly combines the distinctive features of deliberation and intent to take life; 38 Conn. 126; 1 Whart. Cr. Law, § 399.

Lynch law differs from mob law in disregarding the forms of ordinary law, while intending to maintain its substance; while mob law disregards both.

M.

M. The thirteenth letter of the alphabet.

Persons convicted of manslaughter, in England, were formerly marked with this letter on the brawn of the thumb.

This letter was sometimes put on the face of treasury notes of the United States, and signifies that the treasury note bears interest at the rate of one mill per centum, and not one per centum interest.

MACE BEARER. In English Law. One who carries the mace, an ornamented staff, before certain functionaries. In Scotland an officer attending the court of session, and usually called a macer.

MACE-GREFF. In old English law, one who willingly bought stolen goods, especially food. Brit. c. 29.

MACE-PROOF. Secure against arrest. Wharton.

MACEDONIAN DECREE. In Roman Law. A decree of the Roman senate, which derived its name from that of a certain usurer, who was the cause of its being made, in consequence of his exactions.

It was intended to protect sons who lived under the paternal jurisdiction from the unconscionable contracts which they sometimes made on the expectations after their fathers' deaths; another, and perhaps the principal, object, was to cast odium on the rapacious creditors. It declared such contracts void. Dig. 14, 6, 1; Domat, Lois Civ. liv. 1, tit. 6, § 4; Fonbl. Eq. b. 1, c. 2, § 12, note. See CATCHING BARGAIN; POST OBIT.